



भारत का राजपत्र

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No. 30]

NEW DELHI, SATURDAY, JULY 23, 1994/SAVANA 1, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सार्विक आवेदन और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India
(other than the Ministry of Defence)

विधि, न्याय और कानूनी कार्य मंत्रालय

(विधि कार्य विभाग)

न्यायिक व्याख्या

नई दिल्ली, 8 जून, 1994

मूलना

का. आ. 1653 :—नोटरीज नियम, 1956 के
नियम 6 के अनुसरा में सक्षम प्राधिकारी द्वारा यह सूचना
दी जाती है कि श्री मंदीप कुमार सरकार, एडवोकेट के
उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन
एक आवेदन इस बात के लिए दिया है कि उसे मेकलीगंज,
सब डिविजन, (पश्चिम बंगाल) व्यवसाय करने के लिए
नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप
इस सूचना के प्रकाशन के चाहूदे दिन के भीतर नियित
रूप से मेरे पास भेजा जाए।

[गं. 5 (74)/ 94—न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

MINISTRY OF LAW, JUSTICE AND COMPANY
AFFAIRS

(Department of Legal Affairs)

(Judicial Section)

New Delhi, the 8th June, 1994

NOTICE

S.O. 1653.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Sandip Kumar Sarkar Advocate for appointment as a Notary to practise in Mekli ganj Sub-Division (West Bengal).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5(74)/94-Judl.]

P. C. KANNAN, Competent Authority

नई दिल्ली, 8 जून, 1994

मूच्चना

का. आ. 1654 :—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा वह मूच्चना दी जाती है कि सुश्री सरोजिनी नायर, एडवोकेट, के उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे माऊथ दिल्ली और नई दिल्ली में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप उस मूच्चना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[फा. सं. 5(70)/94-न्यायिक]
पी. सी. कण्णन, सक्षम प्राधिकारी

New Delhi, the 8th June, 1994

NOTICE

S.O. 1654.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Rules, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Miss Sarojini Nair, for appointment as a Notary to practise in South Delhi and New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[F. No. 5. (70)/94-Judl.]
P. C. KANNAN, Competent Authority.

गृह मंत्रालय

(पुनर्वासि प्रभाग)

नई दिल्ली, 23 जून, 1994

का. आ. 1655 :—विस्थायित शक्ति (प्रतिकार) एवं पुनर्वासि अधिनियम, 1954 (1954 का 44) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करने हेतु केन्द्र सरकार एवं द्वारा हिमाचल प्रदेश सरकार, महायाना एवं पुनर्वासि विभाग के विशेष सचिव (राजस्व)/प्रपर सचिव (राजस्व)/संयुक्त सचिव (राजस्व), जैसा भी मामला हो, को अपने स्वयं के दायित्वों के अतिरिक्त हिमाचल प्रदेश राज्य में “क्षतिपूर्ण पूल” के भाग के रूप में मूलियों एवं सम्पत्तियों के संबंध में उक्त अधिनियम के द्वारा अथवा उसके अधीन बन्दोबस्तु आयुक्त को सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से बन्दोबस्तु आयुक्त के रूप में नियुक्त करती है।

इसके द्वारा दिनांक 2-8-1985 की अधिसूचना संख्या 1(19)/विशेष सैल/84-एम-एम-II (ग) का अविक्रमण किया जाता है।

[संख्या 1(4)/94-बन्दोबस्तु(क)]
पी. एम. शर्मा, अवर सचिव

MINISTRY OF HOME AFFAIRS

(Rehabilitation Division)

New Delhi, the 23rd June, 1994

S.O. 1655.—In exercise of the powers conferred by Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Special Secretary (Rev.)/Additional Secretary (Rev.)/Joint Secretary (Rev.), as the case may be, to the Government of Himachal Pradesh, Relief and Rehabilitation Department as Settlement Commissioner for the purpose of performing, in addition to his own duties, the function assigned to such Settlement Commissioner by or under the said Act, in respect of the lands and properties forming part of the “Compensation pool” within the State of Himachal Pradesh.

This supersedes Notification No. 1(19)/Spl. Cell/84-SS-II(c) dated 2-8-1985.

[No. 1(4)/94-Settlement(A)]

P. S. SHARMA, Under Secy

नई दिल्ली, 23 जून, 1994

का. आ. 1656 :—विस्थायित अवित (प्रतिकर एवं पुनर्वासि) अधिनियम, 1954 (1954 का 44) की धारा (34) की उप धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैं एवं द्वारा इस विभाग की अधिसूचना संख्या 1 (4)/94-बन्दोबस्तु (क) दिनांक 23 जून, 1994 के तहत बन्दोबस्तु आयुक्त के रूप में नियुक्त हिमाचल प्रदेश सरकार, महायाना एवं पुनर्वासि विभाग के विशेष सचिव (राजस्व), प्रपर सचिव (राजस्व), संयुक्त सचिव (राजस्व), जैसा भी मामला हो, को पुरुष बन्दोबस्तु आयुक्त की नियुक्ति लिखित शक्तियां प्रत्यायोजित करता हूँ :—

- (1) उक्त अधिनियम की धारा 23 के अन्तर्गत अपील सुनने की शक्तियां।
- (2) उक्त अधिनियम की धारा 24 के अन्तर्गत पुनर्वासि सुनने की शक्तियां।
- (3) उक्त अधिनियम की धारा 28 के अन्तर्गत मामलों के अंतर्गत अवित की शक्तियां।

2. इसके द्वारा दिनांक 14-8-1985 की अधिसूचना संख्या 1 (19)/विशेष सैल/84-एम-एम-II (ग) का अविक्रमण किया जाता है।

[संख्या 1 (4)/94-बन्दोबस्तु(क)]

जी. एम. संधू, पुरुष बन्दोबस्तु, आयुक्त

New Delhi, the 23rd June, 1994

S.O. 1656.—In exercise of the powers conferred by Sub-Section (2) of Section (34) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), I hereby delegate to Special Secretary (Rev.)/Additional Secretary (Rev.)/Joint Secretary (Rev.), as the case may be, to the Government of Himachal Pradesh, R&R Department, appointed as Settlement Commissioner vide this Department's Notification No. 1(4)/94-Settlement (A) dated the 23rd June, 1994, the following powers of the Chief Settlement Commissioner :—

- (i) Powers to hear appeals under Section 23 of the said Act.
- (ii) Powers to hear revisions under Section 24 of the said Act.

(iii) Powers to transfer cases under Section 28 of the said Act.

2. This supersedes Notification No. 1(19)/Spl. Cell/84-SS-II (D) dated 14-8-1985.

[No. 1(4)/94-Settlement(B)]

G. S. SANDHU, Chief Settlement Commissioner

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 24 जून, 1994

स्टाम्प

का. आ. 1657 :—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (क) द्वारा प्रवत शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो भारतीय रेलवे वित्त निगम निमिट्ट द्वारा जारी किए गए मात्र उत्तीर्ण करोड़ और पचास लाख रुपये मूल्य के आई. आर. एफ. सी. बाण्डों की सातवीं श्रृंखला के

VII ए	1 से 20,000
VII बी	1 से 20,000
VII सी	1 से 20,000
VII डी	1 से 5,000
VII ई	1 से 20,000
VII एफ	1 से 20,000
VII जी	1 से 30,000
VII एच	1 से 60,000 तक

की विशिष्ट संख्या वाले 19.50 करोड़ 10.5% कर-मुक्त बाण्डों के रूप में वरित अट्टणपत्रों के स्वरूप के बाण्डों पर उक्त अधिनियम के अन्तर्गत प्रभार्य है।

[स. -21/94—स्टाम्प फा. स. -33/43/93-वि. क.]

आर. के. बर्मा, उप-मंत्रिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 24th June, 1994

STAMPS

S.O. 1657.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of debentures—described as 19.50 crores—10.5 per cent Tax Free Bonds—I.R.F.C. Bonds of the seventh series bearing distinctive numbers:

VII A	1 से 20,000
VII B	1 से 20,000
VII C	1 से 20,000
VII D	1 से 5,000
VII E	1 से 20,000

VII F 1 से 20,000

VII G 1 से 30,000

VII H 1 से 60,000

of the value of Rupees Nineteen Crores and Fifty Lakhs only issued by Indian Railway Finance Corporation Limited are chargeable under the said Act.

[No. 21/94-Stamp-F. No. 33/43/93-ST]

R. K. VERMA, Dy. Secy.

वार्षिक भूतालय

(विदेश व्यापार महानिदेशालय)

नई दिल्ली, 5 जूलाई, 1994

का.आ. 1658.—मैसर्स चम्बल फर्टिलाइजर और कैमिकल लि. कोटा में उनके गैस आधारित फर्टिलाइजर प्रोजेक्ट के लिए उप-स्टकर/मरीनरी के आयात के लिए 130 करोड़ रुपये (एक सौ तीस करोड़ रुपये) के लिए एक आयात लाइसेंस सं.पी.सी.जी./2127901 दिनांक 18-4-1991 आरी किया गया था।

2. कर्म ने सीमाशुल्क प्रयोजन प्रति की अनुनियि जारी करने के लिए इस प्राधार पर आवेदन किया है कि जब उनके प्रतिनिधि कांडला में वस्त्रई भार्या कागजातों के साथ लाइसेंस की सीमाशुल्क प्रति जा रहे थे तो यह जारी हो गई और इसका प्राप्तिक रूप से इस्तेमाल हो पाया था। अतः यह सीमा शुल्क प्रयोजन प्रति की लाइसेंस में दी गई घोष 1,08,36,270 रुपये (एक करोड़ शाठ लाख उत्तीर्ण हजार दो सौ सातर रुपये मात्र) की राशि के इस्तेमाल करने के लिए आवश्यकता पड़ गई है।

3. अपने आवे के समर्थन में लाइसेंसधारी ने नोटरी प्रिलिक दिल्ली के समें रसीदी कागज पर विधिवत शपथपत्र दाखिल किया है। तदनुसार मैं संतुष्ट हूँ कि कर्म से आयात लाइसेंस सं.पी.सी.जी./2127901 दिनांक 18-4-91 की सीमाशुल्क प्रयोजन प्रति ग्रम हो गई है। यथासंशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 की उप धारा 9 के अन्तर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स चम्बल फर्टिलाइजर और कैमिकल लि., कोटा की गई उक्त मूल सीमा-शुल्क प्रयोजन प्रति सं.पी.सी.जी./2127901 दिनांक 18-4-91 एवं द्वारा दद की जारी है।

पार्टी को उक्त आयात लाइसेंस की सीमाशुल्क प्रयोजन प्रति की अनुसिपि श्रावण में जारी की जा रही है।

[एफ. सं. सी.जी.-3/939/18/89-90/77]

गैटा माथुर, उप महानिदेशक विदेश व्यापार

कृते महानिदेशक विवेण व्यापार

MINISTRY OF COMMERCE

(Directorate General of Foreign Trade)

New Delhi, the 5th July, 1994

S.O. 1658.—M/s. Chambal Fertilizer and Chemical Ltd. Kota were granted an Import Licence No. P/CG/2127901 dated 18-4-1991, for Rs. 130 Crores (Rupees One hundred thirty crores) for the import of equipment/machinery for their gas based Fertilizer Project at Kota.

2. The firm has applied for issue of Duplicate copy of custom purpose copy on the grounds that the custom copy of the licence was stolen alongwith other documents when the same were being carried by their representative from Kandla to Bombay and utilised partly. The custom purpose copy is now required to utilise the balance of Rs. 1,08,36,270 (Rupees one crore eight lacs thirty six thousands two hundred seventy only) available in the licence.

3. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary Public, Delhi. I am accordingly satisfied that the custom purpose copy of Import Licence No. P/CG/2127901 dated 18-4-91 has been misplaced by the firm. In exercise of the powers conferred under Sub-clause 9 of the Import (Control) Order 1955 dated 7-12-1955 as amended, the said original custom purpose copy No. P/CG/2127901 dated 18-4-91 issued to M/s. Chambal Fertilizer and Chemical Ltd., Kota is hereby cancelled.

A Duplicate Custom Purpose copy of the said Import Licence is being issued to the party separately.

[F. No. CG-III/939/18/89-90/77]

RITA MATHUR, By Director General of Foreign Trade
For Director General of Foreign Trade

पर्यावरण और बन मंत्रालय

नई दिल्ली, 5 जुलाई, 1994

का आ. 1659:—प्रधिसूचना का निम्नलिखित प्रारूप, जिसे केन्द्रीय मरकार, पर्यावरण (संरक्षण) प्रधनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (2) के खण्ड (5) के माध्य पठित उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जारी करना चाहती है, पर्यावरण (संरक्षण) नियम, 1986 के नियम 3 के उपनियम (3) और नियम 5 की प्रधानमंत्रालय से शक्तियों की जानकारी के लिए प्रकाशित किया जाता है जिसके उम्मे प्रभावित होने की संभावना है और सूचना दी जाती है कि उक्त प्रारूप प्रधिसूचना पर, उम्मे तारीख से, जिसको भारत के उस राजपत्र की प्रतियां, जिसमें यह प्रधिसूचना प्रकाशित की जाती है, जमता को उपलब्ध करा वी आती है, साठ दिन की समाप्ति पर या उसके पश्चात् विचार किया जाएगा।

कोई व्यक्ति, जो आक्षेप या सुझाव काल करते का इच्छुक है, ऐसा कर सकता है और उसे लिखित में सचिव, भारत मरकार, पर्यावरण और बन मंत्रालय, पर्यावरण भवन, मी.जी.ओ. काइलेक्स, भोवो लोड, नई दिल्ली-110003 को ऊपर विनियोग स्वविधि के भीतर प्रयोगित कर सकता है।

प्रारूप प्रधिसूचना

मानवजनिक कियाकर्ताप वायु, जल और भू-प्रदूषण कारित करते हैं, जिसके हारा बन, जीवकोश संपदा, बनस्पति और जीवित प्राणी संकटापन्न होते हैं और ये कियाकर्ताप किसी सुरक्षित दूरी पर किए जाने प्रयोगित हैं जिससे कि यह सुनिश्चित किया जा सके कि उनमें हमारी प्राकृतिक संपदा पर प्रतिकूल प्रभाव न पड़े।

और ग्रम सभ्यता के काजीरंगा राष्ट्रीय पार्क में, जिसका मुख्यालय बोक्हाकट में है, गेंडों की कुल जनसंख्या का लीन-बैचाई भाग बास करता है और उसमें संकटापन्न जाति के बय पशुओं, जैसे अनूपी हिरण, बन्य भैंस, हाथी, चीते और गंग डालकिन का गवर्ने वडा एकमात्र संकेन्द्रण है और यह व्यक्तियों एवं जीवक्रम निम्न धाराघासि पारस्पर्यतिक तंत्र बाला अपने प्रकार का एकमात्र पार्क है, और केन्द्रीय मरकार के पैट्रोलियम एवं प्राकृतिक गैस मंत्रालय के प्रणालीन निप्रवणाधीन मैर्सर आई.बी.पी. कं. लि. का नुमानीगढ़ (काजीरंगा के पूर्व) में एक पैट्रोलियम परिवरणी स्थापित करने का प्रस्ताव है और उक्त परिवरणी के विभागात्मक कियाकलापों से प्राकृतिक माध्यनों और काजीरंगा राष्ट्रीय पार्क और उसके परिवेश में बन्य जीवों के बास पर गंभीर प्रभाव पड़ सकता है।

और उक्त परिवरणी स्थल के चारों ओर 15 किलोमीटर के अर्द्ध-व्यास के भीतर 'प्रविकास जौन' का स्थित करने का प्रस्ताव है, सिवाय उत्तर-

पश्चिम गंगी ओर, जहाँ 'प्रविकास जौन' का विस्तार उक्त पार्क की ठीक पूर्वी सीमा तक होगा।

मत्र. केन्द्रीय मरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (3) के खण्ड (४) के माध्य पठित पर्यावरण (संरक्षण) प्रधनियम, 1986 (1986 का 24) की धारा 3 की उपधारा (1) और उपधारा (2) के खण्ड (-) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि इस प्रधिसूचना के अंतिम प्रकाशन की तारीख से ही 'प्रविकास जौन' के भीतर, जिसके विनियोग नीचे उल्लिखित किए जा रहे हैं, केन्द्रीय मरकार के पूर्वानुभोदन के विना औद्योगिक क्षेत्र, नगरों अपसंरचनात्मक सुविधाओं और ऐसे अन्य क्रियाकलापों का विस्तार, जिगे परिणाम स्वरूप प्रदूषण और सकुचन हो सकेगा, प्रनुकात नहीं किया जाएगा:—

'प्रविकास जौन'

नमालीगढ़ परिवरणी स्थल के चारों ओर 'प्रविकास जौन' के निदेशक स्थितिश्चित्त स्थल में है:—

स्थान	स्थान
1. $93^{\circ} - 32' - 49''$	$26^{\circ} - 40' - 30''$
2. $93^{\circ} - 33' - 15''$	$26^{\circ} - 41' - 45''$
3. $93^{\circ} - 36' - 45''$	$26^{\circ} - 37' - 30''$
4. $93^{\circ} - 40' - 30''$	$26^{\circ} - 40' - 45''$
5. $93^{\circ} - 47' - 30''$	$26^{\circ} - 43' - 40''$
6. $93^{\circ} - 47' - 10''$	$26^{\circ} - 26' - 08''$
7. $93^{\circ} - 58' - 30''$	$26^{\circ} - 34' - 20''$

[म. जे. -11011/16/90-प्राई.प.-II]

के. के. बदशी, अवर सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

New Delhi, the 5th July, 1994

S.O. 1659.—The following draft of a notification which the Central Government proposes to issue in exercise of the powers conferred by sub-section (1) read with clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), is hereby published, as required under sub-rule (3) of rule 3 and rule 5 of the Environment (Protection) Rules, 1986 for the information of the public likely to be affected thereby and notice is hereby given that the said draft notification will be taken into consideration on or after the expiry of sixty days from the date on which the copies of the Gazette of India in which this notification is published are made available to the public.

Any person desirous of filing any objection or suggestion may do so and forward the same in writing to the Secretary to the Government of India in the Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi-110003 within the period specified above.

DRAFT NOTIFICATION

Whereas anthropogenic activities cause air, water and land pollution thereby endangering forests, genepool reserves, vegetation and living creatures and these activities are required to be carried out at a safe distance so as to ensure that our natural reserves may not be affected adversely;

And, whereas, the Kaziranga National Park with Headquarter at Bokhukut in the State of Assam is the home of three-fourth of the total population of Rhino and contains largest single concentration of endangered species wild animals like swamp-deer, wild-buffalo, elephants, tigers and

Gangetic Dolphins and it is the only park of its kind with a viable lowland grassland ecosystem in South Asia;

And whereas M/s. IBP Co. Ltd. under the administrative control of the Central Government in the Ministry of Petroleum and Natural Gas is proposing to set-up a Petroleum Refinery at Numaligarh (East of Kaziranga) and the developmental activities for said refinery may cause tremendous pressure on the natural resources and the wild-life habitat in the Kaziranga National Park and its surroundings;

And, whereas, it is proposed to create a "No Development Zone" within a radius of 15 km around the said refinery site except towards North West where the "No Development Zone" shall extend right up to the eastern boundary of the said park;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of the final publication of this notification the expansion of industrial area, townships, infrastructure facilities and such other activities which could lead to pollution and congestion shall not be allowed, except with the prior approval of the Central Government, within the "No Development Zone" the specification of which is being mentioned below:—

"No Development Zone"

The coordinates of the No Development Zone around Numaligarh refinery site are as follows:—

Longitude	Latitude
i. 93°—32'—49"	26°—40'—30"
ii. 93°—33'—15"	26°—41'—45"
iii. 93°—36'—45"	26°—37'—30"
iv. 93°—40'—30"	26°—40'—45"
v. 93°—47'—30"	26°—43'—40"
vi. 93°—47'—10"	26°—26'—08"
vii. 93°—58'—30"	26°—34'—20"

[No. J-11011/16/90-IA.II]

K. K. BAKSI, Addl. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 30 जून, 1994

का.आ. 1660.—केन्द्रीय सरकार, भारतीय आयु-विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) द्वारा प्रदल शक्तियों का प्रयोग करते हुए, डा. भास्कर नंद रे चौधरी को भारतीय आयु-विज्ञान परिषद के सदस्य के रूप में नामनिर्दिष्ट करती है और भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की का.आ.म. 138, तारीख 16 जनवरी, 1960 द्वारा प्रकाशित श्रधिमूलन में निम्नलिखित और संस्थाधन करती है, श्रावण 5.

उक्त श्रधिमूलन में "धारा 3 की उपधारा (1) के द्वारा (ख) के अधीन निर्वाचित" शीर्षक के नीचे क्रम सं. 5

और उसमें संबंधित प्रविटियों के स्थान पर निम्नलिखित क्रम सं. और प्रविटियों रखी जाएगी, अर्थात्:—

"5. डा. भास्कर नंद रे चौधरी,
220 आचार्य जगदीश चन्द्र बोस रोड,
कलकत्ता-700 020,
पश्चिम बंगाल।"

[का.म. वी-11013/9/94-प्र.वि. (यू.जी.)]

एस.के. मिश्रा, डैस्क अधिकारी

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 30th June, 1994

S.O. 1660.—In pursuance of the powers conferred by sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government hereby nominates Dr. Bhaskarananda Ray Chaudhuri as a member of the Medical Council of India and makes the following further amendments in the notification of the Government of India in the erstwhile Ministry of Health published vide No. S.O. 138, dated the 16th January, 1960, namely:—

In the said notification, under the heading "Elected under clause (b) of sub-section (1) of section 3" for serial number and entry shall be substituted, namely:—

"5. Dr. Bhaskarananda Ray Chaudhuri,
220, Acharya Jagdish Chandra Bose Road,
Calcutta-700 020,
West Bengal."

[No. V. 11013/9/94-ME(UG)]

S. K. MISHRA, Desk Officer

श्रम मंत्रालय

नई दिल्ली, 1 जुलाई, 1994

का.आ. 1661.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार, यूको बैंक के प्रबन्धनात्मक के बब्ड नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-94 की प्राप्त हुआ था।

[मंस्त्रा एल-12011/93/88-डी II प/आई.आर. (बी 2)]

वी.के. शर्मा, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 1st July, 1994

S.O. 1661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 1-7-1994.

[No. I-12011/93/88-डी II A/IR(B-II)]

V. K. SHARMA, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 67/88

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश
क्रमांक एल-12011/93/88-डी2(ए)दिनांक 28-10-88
पृ.को. बैंक, स्टाफ एसोसियेशन, परवाना भवन, माध्य
बाग, नई दिल्ली

—प्रार्थी

बनाम

पूर्णो बैंक, ए-30, शास्त्री नगर, जयपुर

—प्रप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के.एल. व्यास, आर.ए.च.जे.एस.
प्रार्थी की ओर से:
विवक्षी की ओर से:
दिनांक अवार्ड:

श्री जे.एल. शाह

कोई हाजिर नहीं

3-5-1994

अवार्ड

श्री जे.एल. शाह यूनियन की ओर से उपस्थित आये। विवक्षी की ओर से कोई हाजिर नहीं है। यूनियन को दिनांक 1-2-90 से निरस्तर समय दिया जा रहा है किन्तु कोई शहादत प्रस्तुत नहीं की गई है। श्री शाह इस प्रकरण में पैरवी नहीं करना चाहते हैं। यूनियन को अब और समय दिया जाना न्यायोचित नहीं है। मामले के तथ्यों व परिस्थितियों को देखते हुए इस विवाद में “नो डिस्प्लॉट अवार्ड” पारित किया जाता है जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

के.एल. व्यास, पीठासीन अधिकारी

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

नई दिल्ली, 1 जुलाई, 1994

का.आ. 1662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, एल.आई.सी. ऑक इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-1994 को प्राप्त हुआ था।

[संख्या एल-17011/7/89-ग्राईआर (बी-2)]

वी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 1st July, 1994

S.O. 1662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workmen, which was received by the Central Government on 1-7-1994.

[No. I-17011/7/89-1R(B-II)]

V. K. SHARMA, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 75/89

रैफरेंस:— केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश
क्रमांक एल-17011/7/89 ग्राई.आर.बी. II,
दि. 19-7-89

श्री आर. पी. शर्मा पुत्र थी. डी. पी. शर्मा
मार्फत उपाध्यक्ष राजस्थान ट्रेड यूनियन केन्द्र, तीन मूर्ति
(गांगुली) भवन, अजमेर रोड, जयपुर —प्रार्थी

बनाम

सीनियर डिवीजन मैनेजर, बी.लाइफ इण्डिया
कापोरेशन आफ इण्डिया, बांगानी सिंह रोड, जयपुर

—प्रप्रार्थी

उपस्थिति

माननीय न्यायाधीश श्री के.एल. व्यास, आर.ए.च.जे.एस.

प्रार्थी को ओर से:
अप्रार्थी की ओर से:
दिनांक अवार्ड:

कोई हाजिर नहीं

श्री एम.डी. अग्रवाल
23-5-1994

अवार्ड

श्री एम.डी. अग्रवाल, विपक्षी प्रतिनिधि उपस्थित हैं। प्रार्थी यूनियन को ओर से कोई हाजिर नहीं है। आज यूनियन की शहादत भी हाजिर नहीं है। यूनियन को दिनांक 29-8-91 से निरस्तर शहादत पेश करने हेतु समय दिया जा रहा है अब अधिक समय किया जाना उचित प्रतीत नहीं होता। ऐसा प्रतीत होता है कि यूनियन इस प्रकरण में रुचि नहीं ले रही है यद्यपि मामले में नो डिस्प्लॉट अवार्ड पारित किया जाता है जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

के.एल. व्यास, न्यायाधीश

औद्योगिक न्यायाधिकरण, जयपुर।

नई दिल्ली, 5 जुलाई, 1994

का.आ. 1663.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब नैशनल बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 1-7-94 को प्राप्त हुआ था।

[संख्या एल. 12012/18/86-ग्राई.आर. (बी-2)]

वी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 1-7-1994.

[No. L-12012/18/86-IR(B-II)]

V. K. SHARMA, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस. नं. सी.आई.टी. 17/1987

रेफरेंस : केन्द्र सरकार, अम मंत्रालय, नई दिल्ली की अधिसूचना
क्रमांक एल. 12012/18/86-1(ए) दिनांक 1-5-87
श्री रमेश जाटव मार्फा राजस्थान बैंक एम्प्लाईज
यूनियन, परवाना भवन, भाग्यसिंह बाग, जोधपुर।

—प्रार्थी

बनाम

केन्द्रीय प्रबन्धक, पंजाब नेशनल बैंक, ए-36 शास्त्री
नगर, जोधपुर।

—अप्रार्थी

उपर्युक्त

माननीय न्यायाधीश श्री के.एन. लाल, आर.एच.जे.एस.
प्रार्थी की ओर से : श्री जे.एल. शाह
अप्रार्थी की ओर से : मनोज कुमार गर्मा
दिनांक अवार्ड : 10-5-94

अवार्ड

केन्द्र सरकार द्वारा नियोजक पंजाब नेशनल बैंक,
जोधपुर व उनके अधिक रमेश जाटव के बीच उत्पन्न
निम्न औद्योगिक विवाद को अधिनिर्णय हेतु न्यायाधिकरण
में प्रेवित किया गया है :

“क्या पंजाब नेशनल बैंक, जोधपुर के प्रबन्धतंत्र की श्री
रमेश जाटव की संचयी प्रभाव डालने वाली दो वेतन
बृद्धियों को रोकने का दण्ड देने की कार्रवाई न्यायोचित
है? यदि नहीं तो उक्त कर्मकार किस अनुतोंप का
हकदार है?”

2. अधिक के क्लेम के अनुसार नियोजक द्वारा अधिक
को 3-2-84 को 4 अधिकारीयों के आधार पर आरोप पत्र
दिया गया था व घरेलू जांच के पश्चात् जांच अधिकारी
ने अधिक को कुल तीन आरोपों में दोधी माना था। जांच
रिपोर्ट के आधार पर अनुशासनात्मक अधिकारी द्वारा
अधिक की दो वार्षिक वेतन बृद्धियों संचयी प्रभाव से
रोकने का दण्ड देने का अधिकारी द्वारा दो वेतन बृद्धियों
संचयी प्रभाव से रोकने के दण्ड देने का यथावत रखा गया।
जांच अधिकारी की रिपोर्ट को क्लेम में इस आधार पर

चुनौती दी गई है कि उपलब्ध साक्ष्य से अधिक के विरुद्ध कर्भी
भी आरोप संवित नहीं होता। इसलिये जांच अधिकारी का
निष्कर्ष अनुचित (परवर्ते) होने से मानने योग्य नहीं है।
इसके अतिरिक्त क्लेम में दण्डादेश को अवैधानिक मानने
का कोई भी आधार नहीं बताया गया है।

3. बैंक की ओर से क्लेम का जो जवाब प्रस्तुत किया
गया है उसमें यह बताया गया है कि जांच अधिक के
विरुद्ध नियमानुसार व निष्पक्ष रूप से की गई थी, जांच
अधिकारी द्वारा प्रस्तुत निष्कर्ष उचित व तर्क संगत है
तथा अधिक के विरुद्ध आरोप की प्रकृति को देखते हुए
जो दण्डादेश नियोजक द्वारा पारित किया गया है वह किसी
भी प्रकार अधिक या अनुचित नहीं है। उनके अनुसार
द्विष्टीय समझौते के पैरा 19.6 के अनुसार दम प्रकार के
दुराचरण के मामले में अधिक को सेवा मुक्त भी किया जा
सकता है किन्तु नियोजक ने अधिक के विरुद्ध उदार सख
अपनाते हुए आक्षेपित दण्डादेश पारित किया है। यह भी
अनुशोध किया गया कि प्रारंभ में जांच की औचित्यता के
संबंध में निर्णय न्यायाधिकरण द्वारा दिया जावे। नियोजक
की ओर से जांच कार्यवाही का सूर्य अभिलेख न्याया-
धिकरण में प्रस्तुत किया गया है। इसके अतिरिक्त अन्य
कोई भी साक्ष्य प्रेषित किसी भी पक्ष द्वारा प्रस्तुत नहीं
किये गये हैं।

4. न्यायाधिकरण की आदेशिका दिनांक 14-3-89 के
अनुसार यह निर्णित किया हुआ है कि अधिक के विलापक
जो घरेलू जांच की गई थी वह उचित एवं निष्पक्ष है। इस
विनिष्पत्य के पश्चात् निर्धारण हेतु दो बिन्दु रह जाते हैं।
प्रथम तो यह कि क्या जांच अधिकारी द्वारा आरोपों
की गिरफ्ता बाबत दिये गये निष्कर्ष अनुचित हैं तथा यदि
जांच निष्कर्ष उचित है तो क्या न्यायाधिकरण दण्डादेश
में किसी भी प्रकार हस्तक्षेप करने के लिये सक्षम है।

5. इस प्रकार के औद्योगिक विवाद के निस्तारण के
मामले में घरेलू जांच में प्रस्तुत साक्ष्य के विवेचन के
बाबत जो मान्य विधि मिहांत हैं उनके अनुसार यह न्यायाधि-
करण अपील न्यायालय के रूप में सभ्य का विवेचन
करने के लिये सक्षम नहीं है तथा नियोजक को घरेलू
जांच में अधिक के विरुद्ध आरोप संवेद्ध रहित सावित
करना आवश्यक नहीं है। न्यायाधिकरण को मात्र यह देखना
है कि जांच अधिकारी के समक्ष अधिक पर लगाये गये
आरोप के संबंध में कोई विधिक साक्ष्य उपलब्ध थी अथवा
नहीं व यदि विधिक साक्ष्य उपलब्ध थी तो जांच अधिकारी
द्वारा उसका विवेचन उचित प्रकार से किया गया है अथवा
नहीं। यह भी देखना आवश्यक है कि जांच अधिकारी ने
अपने निष्कर्ष के लिये तर्क संगत कारण दिये हैं अथवा नहीं
तथा उपलब्ध साक्ष्य से यदि न्यायाधिकरण को यह मत हो
कि अन्य प्रकार का विनिष्पत्य भी संभव है तो भी जांच
अधिकारी के निष्कर्ष को परिवर्तित नहीं किया जा सकता।

यदि यह प्रकट हो कि उपस्थिति विधिक साक्ष्य को मानने के उचित कारण जांच अधिकारी द्वारा दिये गये हैं। विधिक साक्ष्य की अनुपलब्धता व तर्क संगत निष्कर्ष के अधार में ही जांच अधिकारी के निष्कर्ष को अनुचित (परवर्स) माना जा सकता है।

6. श्रमिक के विश्व जो नार आरोप लगाये गये थे उनमें मेरा जमा व डैविट के लजेर्म में श्रमिक द्वारा इन्द्राज करने के आरोप को जांच अधिकारी ने समझ के अधार पर मानित नहीं माना है। इसके अतिरिक्त जो आरोप मानित मान गये हैं उनके अनुसार दिनांक 25-1-84 की श्रमिक ने बैंक के प्रबन्धक श्री मेहता के साथ अभद्र व्यवहार किया। 6-10-83 की बैंक समय में बैंक के हाल में रेडियो बजाया व सुना तथा 17-1-84 व 21-1-84 की प्रबन्धक व लेखाकार द्वारा मंगाने पर संबंधित रजिस्टर्स व वाउचर्स उनका लाकर नहीं दिये व इस प्रकार तीनों आरोपों के बाबत श्रमिक द्वारा बैंक अदेशों की अवहेलना की गई व दुराचरण किया गया। जांच अधिकारी के समझ जो मौखिक गवाहान पेश हुए हैं उनमें श्री पी.एन. भागवं व श्री तेजकरण मेहता दिनांक 6-10-83 को श्रमिक द्वारा बैंक परिसर में व बैंक के कार्य समय में रेडियो बजाने व सुनने के आरोप से संबंधित हैं। प्रदर्श एम-11 रिपोर्ट इस संबंध में श्री पी.एन. भागवं ने व्यवस्थापक को लिखकर दी थी। श्रमिक ने इस संबंध में स्पष्टीकरण प्रबन्धक द्वारा मांगा गया था जिसके लिखित जवाब प्रदर्श एम-9 में श्रमिक ने यह कहा कि वह एक ग्राहक का रेडियो सुनने सक गया था लेकिन भविष्य में बैंक में रेडियो नहीं सुनेगा व अनुशासन कायम रखेगा। श्री मेहता व भागवं से इस संबंध में जो जिरह हुई है उसको देखते हुए इस आरोप को अप्रमाणित मानने का कोई अधार नहीं बनता। श्रमिक के विद्वान प्रतिनिधि ने यह तर्क दिया कि प्रदर्श एम-9 में कहीं भी श्रमिक को यह स्वीकृति नहीं बनती कि उसने बैंक समय में रेडियो सुना था। नमाम परिस्थितियों व प्रदर्श एम-9 में लिखे तथ्यों को देखते हुए इस तर्क को प्रथम दृष्टया स्वीकार नहीं किया जा सकता।

7. श्रमिक के विश्व प्रबन्धक श्री मेहता के माथ दिनांक 25-1-84 को अभद्र व्यवहार करने का आरोप है उस संबंध में श्री तेजकरण मेहता व श्री बाल किशन शर्मा के बयान जांच अधिकारी के समक्ष करवाये गये हैं। उन कथनों का सार यह है कि बाल किशन की उपस्थिति में श्रमिक ने बैंक की बैंकी पर पी.एन.बी. जब्द लिखान की हिक्सायत मैनेजर द्वारा करने पर उन्हें अपशब्द कहे व इसकी पालना करने में मता किया। गवाह श्री मेहता ने अपने बयान में सम्पूर्ण रूप में आरोप को पुष्ट की है व बाल किशन ने यह कहा है कि श्रमिक व श्री मेहता के बीच बैंकी पर पी.एन.बी. जब्द लिखाने की बाबत बातचीत की थी किन्तु श्रमिक द्वारा मैनेजर को अपशब्द कहने का तथ्य उसे याद नहीं है। बाल किशन ने प्रदर्श एम-22

विस्तृत रिपोर्ट इस गवाह में लिखकर श्री मेहता को दी थी। गवाह ने यह भी कहा है कि यह संभव है उसने घटना के समय जो महत्वपूर्ण बात लगी वह बाब में शायद इस प्रकार की महसूस नहीं हुई। प्रदर्श एम-22 में लिखित तथ्यों को गवाह ने गलत नहीं बताया है व नहीं किसी के प्रभाव से ऐसा लिखना बताया है। इसके अलावा दोनों गवाहान के बयान में कोई भी महत्वपूर्ण बात श्रमिक के पक्ष में नहीं है।

8. श्रमिक के विश्व जो तीसरा आरोप प्रबन्धक व लेखाकार के आदेशानुसार रजिस्टर व वाउचर संबंध में श्री मेहता व श्री भागवं के बयान जांच अधिकारी के समय हुए हैं। इसके अलावा इस संबंध में आर.के.बंसल, श्री मेहता व श्री भागवं के बयान जांच अधिकारी के समय हुए हैं। इसके अलावा इस संबंध में आर.के.बंसल गवाह द्वारा श्रमिक को दिये गये नोटिस प्रदर्श एम-10 व प्रबन्धक द्वारा श्रमिक को दिये गये नोटिस की प्रति प्रस्तुत की गई है। गवाहान सर्वश्री आर.के.बंसल, व मेहता के बयान से व संबंधित नोटिस को फोटो प्रतियों से यह प्रथम दृष्टया साबित होता है कि श्रमिक द्वारा प्रबन्धक व लेखाकार के मंगाने पर संबंधित रजिस्टर व वाउचर उन्होंने लाकर नहीं दिये जबकि इस प्रकार के आदेश को पालना नियमानुसार उसका दायित्व था। श्री बंसल के बयान में यह आया है कि जो रजिस्टर व वाउचर उन्होंने मंगवाये थे वे श्रमिक के स्वतः ही बाद में लाकर दे दिये किन्तु इस तथ्य को मना किया है कि श्रमिक प्रारम्भ में वास्तव में किसी अन्य कार्य में व्यस्त था। श्री बंसल का यह भी कथन है कि श्रमिक ने उच्ची आवाज में उन्हें रजिस्टर लाकर देने में मना किया था व उसका कोई कारण नहीं बताया। इसके अलावा किसी प्रकार की महत्वपूर्ण जिरह किसी भी गवाह से नहीं है।

9. जांच अधिकारी की रिपोर्ट का अवलोकन न्यायाधिकरण द्वारा किया गया गया जिसमें प्रत्येक मौखिक पाया साक्षी व प्रलेख का विवेचन विस्तृत रूप से किया जाना पाया जाता है। श्रमिक के इस तर्क संगत विवेचन के पारचात् ही जांच अधिकारी ने श्रमिक के विश्व तीन आरोपों को मानित माना है। श्रमिक के विद्वान प्रतिनिधि ने जांच रिपोर्ट में ऐसी 'कोई त्रुटि या अनुचितता नहीं बताई है' जिसके कारण उनके निष्कर्ष को अस्वीकार किया जा सके।

10. गवाह श्री पी.एन. भागवं की जिरह में यह आया है कि श्री मेहता प्रबन्धक व श्रमिक के विश्व संबंध अच्छे नहीं थे व प्रबन्धक श्रमिक के बिनाफ प्रमाण एकत्र करना चाहते थे। इसके माथ ही उन्होंने यह कहा है कि प्रदर्श एम-22 रिपोर्ट जो उन्होंने प्रबन्धक को लिखकर दी थी वह स्वेच्छा से लिखी थी। प्रबन्धक और श्रमिक के बीच किस कारण संबंध अच्छे नहीं थे इसका उल्लेख गवाह के बयान में नहीं है। यह भी सर्वधारिक है कि जो श्रमिक अनुशासन नहीं बताता हो उसके निए प्रबन्धक साक्ष्य एकत्र

करके श्रावणक कार्यवाही करने का प्रयास करें। विधायीय जांच से पूर्व भी श्रमिक को प्रबन्धक द्वारा कोई नोटिस दिया गया है जैसा कि जांच कार्यवाही के प्रलेख से सांचित होता है। जो जिरह श्री भार्गव से की गई है उसके पोछे श्रमिक की भावना यह बताने की है कि जांच कार्यवाही उसके खिलाफ द्वेषपूर्ण प्रक्रिया से करवाई की गई व उसी के परिणामस्वरूप उसे दण्डित किया गया। प्रबन्धक के विद्वान प्रतिनिधि का कथन है कि श्रमिक के बोन में द्वेषपूर्ण कार्यवाही का कोई अभिकथन नहीं है व इसके अलावा श्री भार्गव की साक्ष्य में जो तथ्य आये हैं उनसे भी इस प्रकार का तथ्य सांचित नहीं होता। उनका यह भी तर्क है कि जहां साक्ष्य से श्रमिक के विश्वदृढ़ दुराचरण सांचित हो वहां सामान्यतः द्वेषपूर्ण प्रक्रिया से दण्डित करने के तथ्य को सम्भावित नहीं माना जा सकता जैसा कि माननीय सर्वोच्च न्यायालय द्वारा अपने निर्णय ए. आई. आर. 1976/एस. सी. / 98 में प्रतिपादित किया गया है।

11. साक्ष्य के किये गये विवेचन, दोनों पक्षों की बहस व संबंधित प्रलेख के परिशीलन से यह विविष्टिया किया जाता है कि जांच अधिकारी द्वारा उपलब्ध साक्ष्य के आधार पर श्रमिक के विश्वदृढ़ तीन आरोप सांचित मानने का जो निष्कर्ष दिया गया है यह उचित एवं सही है।

12. श्रमिक के विद्वान प्रतिनिधि बहस के में ऐसा कोई भी कारण नहीं बताया है कि जिसको देखते हुए यह माना जाये कि सांचित आरोपों को तुलना में श्रमिक को जो दण्डादेश दिया गया है वह ग्रत्याधिक है इसलिये उसमें कमी की जाना अपेक्षित है। श्रमिक द्वारा प्रस्तुत किये गये कलेम में भी इस प्रकार का कोई अभिकथन नहीं है। श्रमिक के विद्वान प्रतिनिधि ने माननीय राजस्थान उच्च न्यायालय का एक निर्णय राज्य पर्यवर्हन नियम बनाम श्रम न्यायालय एल.एल.जे. 1994 प्रस्तुत किया है जिसमें यह प्रतिपादित किया गया है कि नियम जक द्वारा श्रमिक के विश्वदृढ़ पारित दण्डादेश की वैधता व अंतिमता पर विवार करके श्रम न्यायालय दण्डादेश में कमी करने के लिए सक्षम है। माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त संदर्भित नियम इन्हिं मान्य नहीं है क्योंकि माननीय उच्च न्यायालय की खण्डीठ द्वारा सिविल अपील नं. 197/93 से 205/93 में दिनांक 6-4-94 को दिये गये एक सामान्य निर्णय में माननीय सर्वोच्च न्यायालय के निर्णय में सर्त इण्टिया आयरन एण्ड स्टील कम्पनी बनाम श्रमिकांग ए. आई. आर. 1953 (एस. सी.) 130, पंजाब नेशनल बैंक बनाम ए. एल.पी. फैब्रेशन ए.आई.आर. 1960 (एस.सी.) 160 व मैनेजमेंट 1643 GI/94-2

ग्राफ रिट्रॉट थियेटर बनाम श्रमिकांग ए. आई. आर. 1963 (एस. सी.) 295 में प्रतिपादित सिद्धान्तों का विस्तृत विवेचन करते हुए यह प्रतिपादित किया है कि सेवा मुक्ति के अलावा नियोजक द्वारा श्रमिक के विश्वदृढ़ पारित किये गये वर्षावेश में श्रम न्यायालय उसी स्थिति में हस्तेक्षेप कर सकता है जब यह सांचित हो कि नियोजक द्वारा की गई कार्यवाही सद्भावना पूर्ण क नहीं है अथवा देशपूर्ण कार्यवाही का परिणाम है अथवा अनुचित श्रम प्रक्रिया का परिणाम है या दण्डादेश नैसर्गिक न्याय सिद्धान्तों के विपरीत पारित किया गया है अथवा यह प्रकट होता हो कि आरोप की तुलना में दण्डादेश अनुचित रूप से अत्यधिक पारित किया गया है। इन परिस्थितियों के अलावा जहां यह सांचित हो कि जांच कार्यवाही उचित है वहां पारित दण्डादेश में परिवर्तन या कमी करने का न्यायाधिकरण का कोई भी क्षेत्राधिकार नहीं है खण्डीठ के निर्णय में प्रतिपादित सिद्धान्तों को मानने के लिए यह न्यायाधिकरण बाध्य है व उसमें प्रतिपादित सिद्धान्तों को देखते हुए ऐसा कोई भी आधार अभिकथन की ओर से नहीं बताया गया है जिसके अनुसार उसके खिलाफ पारित दण्डादेश में कमी करने का न्यायोचित कारण माना जाये।

13. श्रमिक के विद्वान प्रतिनिधि ने एक विधिक बहस यह की है द्विपक्षीय समझौते के पैरा 19.6 में जो दण्डादेश का विवरण है उसके अनुसार प्रबन्धक द्वारा एक से अधिक वार्षिक बेतन वृद्धि रोकने का दण्डादेश पारित करने की शक्तियां उनमें निहित नहीं हैं इसलिए श्रमिक के विश्वदृढ़ जो 2 वार्षिक बेतन वृद्धियों रोकने का आदेश दिया गया है वह अवैधानिक है। पैरा 19.6 के प्रावधान निम्न प्रकार है :

"Para 19.6 of the Bi-parlimentary Settlement deals with the punishment to be awarded to the employees for gross misconduct and reads as under :—

- (a) be dismissed without notice; or
- (b) be warned or censured or have an adverse mark entered against him; or
- (c) be fined; or
- (d) have his increment stopped."

उक्त पैरा में बेतन वृद्धि रोकने का जो प्रावधान है उसकी व्याकरणीय व्याख्या करते हुए यह मानना उचित व संबंध नहीं है कि नियम के तहन नियोजक द्वारा एक वार्षिक बेतन वृद्धि रोकने तक का ही दण्डादेश श्रमिक के विश्वदृढ़ पारित किया जा सकता है। विधि दृष्टान्त कोई भी इस संबंध में श्रमिक की ओर से प्रत्युत नहीं किया गया है। किसी भी नियम की व्याख्या व्यक्तिगत रूप से किया जाना आवश्यक है व जिस उद्देश्य से द्विपक्षीय राज्यों में दण्डादेश के प्रावधान रखे गये हैं उनको देखते हुए

यह नियम की व्याख्या की जाना उचित नहीं होगा कि किसी भी प्रकृति के दुरावरण में एक से अधिक वार्षिक बेतन वृद्धि रोकने का प्रादेश नियोजक द्वारा श्रमिक के विरुद्ध पारित नहीं किया जा सकता। ऐसी स्थिति में श्रमिक के विद्वान प्रतिनिधि के तर्क से सहमति प्रकट की जाना संभव नहीं है अन्य किसी प्रकार के विन्दु पर कोई बहस श्रमिक की ओर से नहीं की गई है।

14. मामले के तमाम तथ्यों, परिस्थितियों व विधिक स्थिति को विवेचन के फलस्वरूप प्रेषित विवाद में अधिनिर्णय इस प्रकार पारित किया जाता है कि नियोजक, पंजाब नेशनल बैंक जोधपुर द्वारा श्रमिक रसेश जाटव के विरुद्ध दो वार्षिक बेतन वृद्धि संचायी प्रभाव से रोकने का दण्डादेश उचित एवं वैध है तथा श्रमिक कोई भी अनुरोध प्राप्त करने का अधिकारी नहीं है।

15. अवाई की प्रति केन्द्र सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17-ए के तहत भेजी जावे।

के. एल. थास, न्यायाधीश

नई दिल्ली, 5 जुलाई, 1994

का. आ. 1664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे इलेक्ट्रीफिकेशन पश्चिम रेलवे के प्रबन्धांतर के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-7-94 को प्राप्त हुआ था।

[संख्या एल 41011/51/89—ग्राई. आर. (डी. यू.)]
वी.के. शर्मा, उस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Electrification, Western Railway and their workmen, which was received by the Central Government on 4-7-1994.

[No. L-41011/51/89-IR (DU)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE SHRI H. D. PANDYA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL) AT AHMEDABAD

Reference (ITC) No. 21 of 1991

ADJUDICATION

BETWEEN

Chief Project Manager
Railway Electrification,
Western Railway, Pratapnagar
Baroda

..First Party

AND

The Workmen employed under it .. Second Party

In the matter whether the action of the Chief Project Manager, Railway Electrification, Baroda in terminating the services of the workmen S. Shri Koyabhai Mangalbhai, Bharat Rama, Parvatsingh Virsingh, Amarsingh Chandansingh, Firoz A. Rehman and Ramsingh B. Niranjansingh are justified and legal ? If not, to what relief the concerned workmen are entitled to ?

In the matter whether the action of the Chief Project Manager, Railway Electrification, Western Railway, Pratapnagar Baroda in preparing seniority list in respect of the workmen S/Shri Rasul Khan M. Gulev singh M, Prabhudyal D, Harnamsingh D, and Kirtikumar, casual Khalasis in contravention of the guide of the Hon'ble Supreme Court in relating to the casual labourers of Railway Administration and directions of the General Manager, Western Railway, Bombay is justified ? If not, what relief the workmen concerned are entitled to ?

APPEARANCES :

Shri J. K. Ved—for the workmen.

AWARD

In exercise of the powers conferred u/s. 10(1) of the I. D. Act, 1947, Government of India, Labour Ministry, New Delhi vide its Order No. L-41011/51/89-IR (DU) dated 12-3-91 has referred an industrial dispute for adjudication to this Tribunal.

2. The second party-Union has filed the statement of claim at Ex. 2. They have alleged in the statement of claim that the reference covered the dispute by 7 workmen out of which the workman Shri Niranjansingh D. has dropped himself from contest. Therefore, the remaining 6 workmen are contesting this reference. They have further alleged that the reference relates to non compliance of seniority list as per the directions of the Supreme Court. However, the Central Administrative Tribunal, Gujarat Bench, Ahmedabad has quashed the wrong seniority list and, therefore, now in the present reference this Tribunal has to adjudicate only the point regarding wrongful termination of services of the 6 concerned workmen. Therefore, they alleged the concerned 6 workmen have acquired temporary status of railway employee. Their services have been terminated by the first party. The services of Koyabhai Mangalbhai, Bharat Rama, Parvatsingh Virsingh, Amarsingh Chandansingh, Feroz Abdul Rehman and Ramsingh B. were terminated respectively on 10-8-85, 8-4-86, 20-1-85, 21-4-82, 20-7-87 and 20-7-87. They have further alleged that their services have been terminated in violation of Section 25-F, 25-G of the I. D. Act and Rule 77 of the I. D. Rules, 1957. They have also alleged that they have informed the first party to reinstate the above concerned workmen. However, they refused to do so. Therefore, they filed a complaint before the appropriate Government requesting them to direct the first party to reinstate the above workmen with full back wages. However, in conciliation proceedings no settlement was arrived at and, therefore, the industrial dispute in respect of the above workmen has been referred to Shri N. A. Chauhan for adjudication according to law. Therefore the said reference has been transferred to me for adjudication according to law.

3. The first party has filed the written statement at Ex. 5. They have denied all the allegations made by the second party-Union in their statement of claim. According to them the concerned workmen were engaged as casual labourers and that the first party is not 'Employer' as per the Industrial Disputes Act read with Industrial Disputes Central Rules. They have further contended the concerned workman, Shri Koyabhai Mangalbhai, who was a casual labourer remained unauthorisedly absent on his own and so no notice is required for his termination. Shri Bharat Rama also remained absent on 5-11-85 without any intimation to his supervisor. He remained absent for 95 days and, therefore, as per statutory rules, he could not be engaged on work and that he, therefore, is not entitled to the reliefs claimed by him. Shri Parvatsingh Virsingh has left his job at his own. His services were terminated. They further contended that Shri Amarsingh was sent to A.D.M.O., Godhra for medical examination and that

he was declared unfit and declared fit temporary for 90 days. Thereafter he was again sent for medical examination and that he was declared medically unfit and, therefore, he was not engaged on work. They further contended that Shri Firoz Aboob Rehman remained unauthorisedly absent w.e.f. 6-9-86. He had not assigned reason for his absence to his supervisor and, therefore, he is not entitled for reinstatement. They further contended that none of the workmen are entitled to the reliefs of reinstatement and back wages and they, therefore, urged to dismiss the reference of the concerned workmen.

4. The parties have not led any oral evidence.

5. I heard Shri Ved appearing on behalf of the concerned workmen. He has also filed his written arguments. The first party has filed their written arguments.

6. Most of the facts are not in dispute before me and they may briefly be stated as under : There are 7 workmen who were concerned in this reference. However, the workman Shri Niranjansinh D. has dropped himself from the contest and he is not contesting this reference and so the remaining 6 workmen are contesting the reference before this Tribunal. There are mainly two disputes in this reference one regarding the reinstatement and back wages of the concerned workmen and second dispute is regarding non compliance of the seniority list as per the directions of the Supreme Court. So far as second dispute is concerned, it is resolved as per the judgement of the Central Administrative Tribunal, Gujarat Bench, Ahmedabad who has quashed the wrong seniority list and so the second dispute has not to be adjudicated in this reference as the parties do not want to adjudicate this dispute before this Tribunal. Therefore, the dispute regarding remaining 6 workmen in respect of their reinstatement with back wages has to be adjudicated in this reference. All the 6 workmen were casual labourers in the first party establishment. The second party-Union has alleged that all the 6 workmen have acquired temporary status. This fact has been denied by the first party. Apart from that, it is not in dispute before me that all the 6 workmen were working in the first party-establishment. It is the contention of the second party-Union that the first party has terminated the services of the concerned 6 workmen in violation of provisions of Section 25-F and 25-G of the I.D. Act. The first party has denied the above fact and has raised various contentions. The second party-Union has raised the industrial dispute regarding the reinstatement with back wages in respect of the concerned 6 workmen.

7. Now the concerned 6 workmen were working as casual labourers. It could be seen from the record that they were working as casual labourers since long. Now the first party has produced a circular issued by the Railway Board along-with their written arguments. It relates to the project casual labour-terms of employment of. It can be seen from this circular that this circular is issued keeping in view of the directions given by the Supreme Court. It is in respect of how a temporary status has to be given to a casual labourer who is working on project. It can be seen from this circular that those casual labourer who completes 360 days after 1-1-81 then they have to be treated as temporary (temporary status) from 1-1-84 or the date on which 360 days are completed whichever is later. Looking to the above circular, the concerned workmen who were casual labourers and who have worked for 360 days have acquired a temporary status. Apart from that, even if we assume for a moment that they were casual labourers then what is the position ?

8. Now it is alleged by the second party-Union that the services of 6 workmen have been terminated by the first party. I have also given the dates of termination earlier. In the case of Shri Mohan Surdey and others vs. Union of India and others, O.A. No. 727/1988 in the judgement of Central Administrative Tribunal, Ahmedabad Branch, Ahmedabad it was held that the Indian Railways employ more than 16 lakhs employees, most of whom are doing the work of the movement of traffic on the railway tracks and the maintenance and renewal of the tracks as also the signalling and providing power for haulage of trains and so it was held that the railway is an 'industry' within the meaning of Section 25-K of I.D. Act. It was further held that the railway is an 'industry' as defined in Clause (a) of Section 25-L of the I.D. Act and the employees of the Railway Department are entitled to claim the benefits of retrenchment as enshrine under Section 25-N of the I.D. Act. The above judgement is of the Full Bench of the Central Administrative Tribunal. Keeping in view all the principles laid down in the above case, let us examine

the facts of the case. Now as stated earlier, according to the second party-Union, the first party has terminated the services of the concerned workmen without complying the provisions of Section 25-K of the I.D. Act. Now it is an admitted fact that the first party has not taken prior permission of the appropriate Government before terminating the services of the concerned 6 workmen. They have also not paid the retrenchment compensation as provided in Section 25-N of the I.D. Act. Therefore, termination of the services by the first party of the concerned 6 workmen is in contravention of Section 25-N of the I.D. Act. Even they have not complied with the provisions of Section 25-F of the I.D. Act prior to termination of the services of the above workmen. Therefore, the first party has not complied with the provisions of Section 25-F and Section 25-N of the I.D. Act before terminating the services of above workmen. Therefore, the termination of the services of above workmen is illegal and invalid.

9. It is, however, the contention of the first party that Shri Koyabhai Mangalbhai, Bharat Rama and Firoz A. Rehman remained absent from their duties and that no notice is required for their termination. Now the first party has not led any evidence on this issue. Apart from that even if it is assumed for a moment that Koyabhai Mangalbhai, Bharat Rama and Firoz A. Rehman remained absent from their duties then also if the first party wanted to terminate their services then principles of natural justice have to be followed. However, the first party has not given any notice to show cause to the above workmen nor they have given any charge sheet to them nor they have held any departmental inquiry against them nor they have paid retrenchment compensation, etc. to them. In view of above, the termination of above concerned workmen on the ground of absent from duty is also illegal and invalid. Therefore, there is no merit in the contention of the first party that the above concerned workmen remained absent from duties and, therefore, no notice is required to be served to them and that their services can be terminated without notice is without any merit and has to be rejected.

10. The first party has also raised the contention that Shri Parvatsingh Virsingh has left job on his own and, therefore, no notice is required to be served to him. Now the first party has not proved this contention. They have not established that Shri Parvatsingh Virsingh left the job on his own. If Parvatsingh Virsingh was not coming to his duties then the first party might have given some notice to him to join his duties. However, the first party has not produced anything to show that when Parvatsingh Virsingh did not come to attend his duties they gave him notice to join his duties. In view of the above there is no merit in the above contention of the first party and so it has to be rejected.

11. It is the contention of the first party that Shri Amar singh who was casual Kalasi was sent to A.D.M.O. Godhra and he was declared unfit and, therefore, he was not engaged and his services were terminated. Now (1991) 15 Administrative Tribunals Cases 617, Central Administrative Tribunal, Jabalpur decided the case of Rupnath and Others v. General Manager, South Eastern Railway, Calcutta and Others. In this case para 1017 of Railway Establishment Manual was considered and it was held that A.D.M.O. was not competent to invalidate the official for service in terms of para 1017 (d) and (b) of the Indian Railway Establishment Manual. In view of above said principle, the A.D.M.O. cannot declare unfit a casual labourer under the provisions of above Railway Establishment Manual. Apart from that, it is evident from the record that the cause of termination of services of above workmen is that he was suffering from T.B. The concerned workman had challenged the said medical document by producing counter evidence being Medical Certificate Annexure A/18 from T.B. Research Centre of Government Civil Hospital, Godhra. After the production of the said certificate from Civil Hospital the first party had re-appointed the workman on 21-4-83. The concerned workman served till 16-12-83 and then suddenly the first party terminated the services of the workman without any reason. Thus, the workman had produced the Medical Certificate from T.B. Research Centre of Government Civil Hospital, Godhra and on the basis of this certificate he was again re-appointed and thereafter after about 8 months his services were terminated. When his services were terminated he was not given any opportunity to show cause nor he was given any charge sheet nor any departmental inquiry was held nor the provisions of Sections 25-F and 25-N of the I.D. Act were followed. There-

fore, the termination of services of above employee is also not legal and valid. Therefore, there is no merit in the contention of the first party and it has to be rejected.

12. In view of above discussions, it is crystal clear that the first party has not complied with the provisions of Sections 25-F and 25-N of the I.D. Act before the termination of services of above 6 workmen and, therefore, their termination is illegal and invalid. As the termination of the services of 6 workmen is illegal and invalid and, therefore, the above 6 workmen are entitled to reinstatement with full back wages. In view of the above the second party has proved that the above 6 workmen are entitled to reinstatement with full back wages. In view of the above decision on the above issue the above 6 workmen have to be reinstated with full back wages. The rest of the reference of the second party-Union has to be rejected. I, therefore, pass the following order :

ORDER

The first party is hereby directed to reinstate the 6 workmen, namely S/Shri Koyabhai Mangalbhai, Bharat Ramu, Parvatsingh Virsingh, Amarsingh Chandansingh, Firoz A. Patel and Ramsingh B. Niyantrasingh with full back wages. The rest of the reference of the second party-Union is hereby rejected. Each party to bear its cost.

Sd/- M. Nayak

SECRETARY
Ahmedabad.

Dated : 13th June, 1994.

H. D. PANDYA, Presiding Officer

नई दिल्ली, 5 जून 1994

का. आ. 1695—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के मनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ सौराष्ट्र के प्रबन्धतांक के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण भ्रहमदावाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-7-94 को प्राप्त हुआ था।

[संख्या एस 12012/676/87-डी II ए]

बी. के. शर्मा, डेरेक अधिकारी

New Delhi, the 5th July, 1994

S.O. 1665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Saurashtra and their workmen, which was received by the Central Government on 4-7-1994.

[No. L-12012/676/87-D.II (A)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE SRI R. S. SHUKLA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL (C) AHMEDABAD

Reference (IIC) No. 12 of 1988

ADJUDICATION

BETWEEN

State Bank of Saurashtra Bhavnagar ... First Party
AND

The Workmen employed under it ... Second Party

In the matter whether the action of management of State Bank of Saurashtra in terminating the services

of Shri S. D. Dave without giving him proper opportunity to defend himself is justified ? If not, to what relief is the workman entitled to ?

APPEARANCES :

Shri M. J. Seth—for the first party.

Shri D. K. Vyas—for the second party.

AWARD

By an Order No. L-12012/676/87-D.II (A) dated 5-7-88 the Government of India, Ministry of Labour, New Delhi has referred an industrial dispute to this Tribunal for adjudication u/s. 10(1)(d) of the I.D. Act, 1947. The disputes relate to whether the action of management of State Bank of Saurashtra in terminating the services of Shri S. D. Dave without giving him proper opportunity to defend himself is justified ? If not, to what relief is the workman entitled to ?

2. The case of the concerned workman, Shri S. D. Dave as stated in the statement of claim at Ex. 5 is that he joined the service of the State Bank of Saurashtra in the year 1963 as a Clerk and thereafter he was transferred from Jamjodhpur to the Branch Office of the Bank as a Clerk at Jamnagar in the year 1966. That he is a permanent employee of the Bank. That he was served with the charge sheet dated 6-4-76 comprising of 6 different charges. The inquiry was held on 17-10-77 and ultimately, he was charged with a show cause notice dated 13-1-78 issued by the Assistant General Manager of the Bank. That the applicant submitted his defence on 9-3-78 and ultimately, he was removed from service on 28-6-79. That the concerned workman had filed regular Civil suit No. 357/79 in the Court of the Civil Judge, Sr. Division, Bhavnagar for setting aside the order of removal from service. That the said suit was disposed of on 14-2-83. It was held in that suit that the Civil Judge Senior Division Court had no jurisdiction to try the suit as per the principles laid down in 1973 Supreme Court Page 2238 because the concerned workman is the award staff employee. That the concerned workman thereafter filed an appeal in the District Court, Bhavnagar being No. 89/83 and the said appeal was dismissed by District Court and thereby judgement of the lower was confirmed on 14-2-86. That therefore in that appeal District Court directed to return the plaint Ex-1 to the concerned workman, Sh. S. D. Dave for presenting the same to the proper Court. That thereafter the concerned workman challenged the charge sheet dated 6-4-76 and whole inquiry proceeding in reference to the said charge sheet. That the show cause notice dated 13-1-78 was served upon the concerned workman of the Bank. That after domestic inquiry being completed by the first party Bank the order of removal from service was passed by the Bank on 28-6-79 and thus ultimate order rejecting the appeal of the concerned workman by order dated 9-1-87 was made by the Court. That, therefore, the order of removal passed by the first party-Bank is illegal, void inoperative and against the principles of natural justice. That the concerned workman was appointed by the General Manager of the first party in the year 1976 and therefore, the appointing authority being General Manager and now redesignated as the Director of the Bank was not competent to pass the order of termination. That the charge sheet issued by the authority being Managing Director is also illegal as he was not empowered to do so. That all the proceedings initiated, started and completed by the Bank authority other than the M.D. is void ab initio and also illegal and without any jurisdiction. That the order of removal dated 28-6-79 is passed by the Asstt. General Manager also is the authority lower in rank than MD and, therefore, this authority had no jurisdiction to pass such an order. That, therefore, the appeal was preferred by the concerned workman on 6-7-86 to the General Manager of the State Bank of Saurashtra, Bhavnagar. That the General Manager thereafter rejected the appeal of the concerned workman by letter dated 9-1-87. That the Appellate Authority has not applied his mind to the points raised by the concerned workman. That, therefore, it amounts to non application of the mind by the Appellate Authority. That the Appellate Authority has not followed the principles of natural justice while deciding the appeal. Moreover, the Authority has not touched material points raised by the concerned workman in the appeal. It was further contended by the concerned workman that he was not allowed to be represented by a lawyer in the departmental inquiry. That in respect of charge

No. 1, it is contended by the concerned workman that it is vague and not properly worded and, therefore, the concerned workman was prejudiced in defence. In respect of charge No. 2 being levelled in the show cause notice, it is also vague and not proved. That Shri Bawali Ramji has clearly stated that he has not advanced loan to the concerned workman's brother under his influence, but on the contrary, he states that the advanced loan as per the recommendation of Shri Muchalia. That the material witnesses Smt. Susnada N. Wadher and Smt. V. M. Muchalia were not examined in connection with charge No. 2. That Shri N. H. Wadher is the Accountant of Riddhi Siddhi Engineering Works for this there is no evidence on record. That in respect of charge No. 3, it is contended by the concerned workman that it is vague and there are no rules in the Service Conduct Rules that the concerned employee cannot act as guarantor and the rules are also not referred to in the charge sheet. That at the same time the first party Bank has not suffered monetarily in this transaction and as such the word "act prejudicial to the interest of the bank" as stated in the charge sheet are not correct. That in respect of charge No. 4, it is contended that the same is vague. The witness Taragauri is put leading questions to prove the alleged charges against the concerned workman and, therefore, statement of witness Taragauri cannot be relied upon. That charge No. 5 is in respect of scooter loan. That this charge does not survive because it is no act of misconduct or ill motive on the part of the concerned workman. That therefore there is no act or omission on the part of the concerned workman which amounts to gross misconduct as enumerated under the Standing Orders. That the balance loan amount has already been paid by the concerned workman on 10-11-75 prior to his suspension. That the bank has not suffered any monetary loss in connection with scooter loan. That charge No. 6 is vague because the concerned workman had sent C.L. report by post, but it was not received by the Bank. As alleged by the first party the concerned workman has not received the letter of the Bank dated 4-9-75 to report for duty and on his returning from outside to Hq. That he came to know after he returned to Hq. That he came to know regarding sending of letter dated 4-9-75 by the first party Bank. That the said letter was sent under Postal Certificate. That the concerned workman immediately informed the Bank vide letter dated 10-7-75 narrating the circumstances. But the first party-Bank did not take into consideration the same. That this charge has been intentionally considered as gross misconduct instead of minor misconduct as per rule 19.7. That it is contended that a single action on the part of the concerned workman has caused pecuniary loss to the Bank and the Bank is not concerned with any alleged transaction nor the transactions affect the business of the Bank in any way. That the findings of the Inquiry Officer are perverse and based without evidence on record. In view of the forgoing reasons, it is contended by the concerned workman that he has not committed any act or omission prejudicial to the interest of the Bank. That the Bank has failed to establish these material allegations which are the gist of all the charges Nos. 1 to 4. That the bank's interest does not prejudice the business of the Bank because the business is not affected adversely to the Bank. That, therefore, the charge Nos. 1 to 4 are outside the scope of the definition of the term "misconduct" as enumerated under the Standing Orders. That, therefore, the dismissal is void ab initio because the alleged competent authority who issued the notice is not a Competent Authority. That the orders of dismissal is passed by Shri Daftari and signed by Shri Thakkar the Asstt. General Manager of the first party Bank. That actions were required to be taken by Shri Thakkar who did not give any opportunity to the concerned workman for personal hearing. That the order of dismissal is one of the punishments shockingly disproportionate, and, therefore, it is harsh, disproportionate and excessive while considering the nature of the charges levelled against the concerned workman.

3. The notice was issued by this tribunal which was sent by Regd. A.D. The notice was also served to the first party-Bank. In view of above the first party-Bank filed its written statement at Ex. 9 in this Court. It was contended by the first party Bank before this Tribunal that services of the concerned workman was terminated by an order of dismissal dated 28-6-79. That thereafter the concerned workman had moved the Asstt. Commissioner of Labour (Central), Adipur in the year 1987 i.e. after a lapse of 8 years. That therefore the present reference requires to be rejected. That the first party Bank has already considered various points in response to a

show cause notice issued against the concerned workman. That the Asstt. Manager was the competent authority to decide the propriety and legality of the dismissal order or the concerned workman. That at a time when the order was conveyed, Shri Thakkar was the Asstt. General Manager who decided this matter. That the first party-Bank raised various contentions in their written statement and ultimately contended that the order of dismissal passed against the concerned workman is not by way of victimisation. That the competent authority at the relevant time i.e. on the date of the appointment of the concerned workman, should be appreciated to pass the order of termination. It is well known that only the appointing Authority can be treated as terminating authority for the purpose of deciding the legality and validity of the dismissal order passed by the first party-Bank against the concerned workman.

4. Mr. D. K. Vyas the Learned Advocate appeared for the concerned workman and Shri M. J. Sheth, the learned Advocate appeared for the first party-Bank.

5. It may be noticed that the concerned workman, Shri S. D. Dave had challenged the propriety and legality of the domestic inquiry conducted by the Bank against him. This was a preliminary point of law and, therefore, it was raised as a preliminary issue. This point was earlier decided by the Tribunal and in view of that order Ex. 70 was made on 8-2-93, inter alia, holding that legality and propriety of the departmental inquiry conducted by the first party-Bank against the concerned workman was legal and proper. It was observed in the operative part of the order Ex. 70 as under :

(Matter in Regional Language)

6. Now, only the following issues arise for determination :

1. Is the order of dismissal dated 15-7-88 passed by the first party-Bank against the concerned workman, Shri S. D. Dave is bad on the ground of victimisation or that it is illegal and improper ?
2. If 'yes' then whether the order of dismissal against the concerned workman amounts to punishment which is shockingly disproportionate to the nature of the misconduct for which the concerned workman, Shri S. D. Dave is charged as provided u/s. 11-A of the I. D. Act ?
3. If 'yes', what should be the appropriate relief ?

7. My findings on the above issues are as under :

1. No. The allegations against the concerned workman, Shri S. D. Dave are not proved.
2. Yes. The order of dismissal is shockingly disproportionate to the nature of the misconduct.
3. He should be reinstated on the original post without back wages.

REASONS

8. It is necessary to first recollect that the departmental inquiry conducted by the first party Bank was challenged by the concerned workman. The learned Advocate, Shri Vyas for the concerned workman, Shri S. D. Dave urged before me that the departmental inquiry is one of the preliminary point to be decided at first. Therefore, the Tribunal decided the preliminary point as urged by the concerned workman, Shri S. D. Dave. By order Ex. 70, the Tribunal held that the departmental inquiry conducted against the concerned workman, Shri S. D. Dave was legal and proper. The issue was thus disposed of vide order Ex. 70. Now, as stated above, the present issue is in respect of the validity and legality of the dismissal order Ex. 36. The learned Advocate for the concerned workman, Shri D. K. Vyas invited my attention to the propriety of the charge and contended that the first party Bank has issued charge sheet by levelling six charges against the concerned workman. According to Shri Vyas, none of these charges have been proved by the first party against the concerned workman. The charge sheet dated 13-1-76 enumerates in all six charges wherein charge No. 1 appears to be vague and not properly worded. It was in respect of alleged gross misconduct shown by the concerned workman Shri Dave while serving in the Bank. The concerned workman was allegedly involved to secure a loan of Rs. 75,000 in the year 1974-75 from M/s. Riddhi Siddhi Engg. Works a borrower

of Jamnagar Branch of this bank for various concerns such as Apollo Industries, M/s. R. J. Industries, in which the brother of the concerned workman, Shri J. D. Dave is a partner. Thus, it was alleged against Shri Dave that he was involved under the pecuniary obligation for his official capacity. So far as charge No. 1 is concerned, it has been shown by the concerned workman from his evidence Ex. 66 that while serving as a Clerk in 1963 he himself was not involved in the said loan, but the amount of loan was sanctioned after the same was recommended by one Shri Bakul Muchalla. The Bank had acted upon the recommendations of Shri Bakul Muchalla who was conveniently not examined as a witness by the first party bank in the departmental inquiry conducted against the concerned workman, Shri Dave. In other words, it can be said that the concerned workman, Shri Dave had not opportunity to examine or cross examine the proposed bank witnesses Shri Bakul Muchalla. In view of this, charge No. 1 is not proved against the concerned workman, Shri Dave.

9. Charge No. 2 is in respect of alleged gross misconduct by Shri Dave. It was alleged against him that the concerned workman had used his influence by virtue of his employment in the bank to secure a clean loan of Rs. 3,000 from Shri Nandal Hirji Vadher Accountant of one of the Bank's borrower i.e. M/s. Riddhi Siddhi Engg. Works of Jamnagar in 1974, Rs. 6,000 from Smt. Sushila N. Vadher and also Rs. 5,000 from Mrs. B. M. Muchalla, wife of Shri B. M. Muchalla, a partner of M/s. R. J. Industries. This loan was secured in 1974 for R. J. Inds. in which Shri J. D. Dave, brother of the concerned workman, Shri S. D. Dave is a partner. By this act, it was alleged against the concerned workman that he himself had put under pecuniary obligations to those who were his subject to his official authority. It is needless to say so far as charge No. 1 and 2 are concerned, there was neither pecuniary loss nor any gainful profit which was enjoyed or earned by the concerned workman, Shri S. D. Dave. The Bank has neither incurred any monetary loss or that Shri Dave had earned monetary gain on account of the alleged act of misconduct. It is futile to recollect on plain reading of charge No. 1 and 2, it shows some sort of irregularity on the part of the concerned workman, Shri Dave while discharging his duty as a Clerk in the first party-Bank.

10. So far as charge No. 3 is concerned, it was in respect of alleged gross misconduct in as much as the concerned workman, Shri Dave had used his influence by virtue of his employment in the Bank to secure two loans of Rs. 5,125 each from Shri Girdharlal N. Bhatha and Mrs. Pushpaben Girdharlal Bhatha of Jamnagar during the period of 21-4-75 and 15-4-75 respectively from R. J. Industries and Apollo Industries Shri J. D. Dave the brother of the concerned workman Shri S. D. Dave was a partner. That inspite of this loan amount the concerned workman, Shri Dave had stood as guarantor for the said loan amount guaranteeing the payment if two cheques for Rs. 5,125. These are also vague and does not constitute any act of misconduct on the part of the concerned workman. The learned Advocate, Shri Vyas for the concerned workman vehemently urged before me with great strain that the first party Bank had not incurred any pecuniary loss or the concerned workman had not earned any monetary gain as well as the first party had not suffered any financial loss in these dealings. I agree with this submission of Shri Vyas and say that the role of the concerned workman, Shri Dave was only in respect of guarantor, the behaviour of which can be said to some sort of childishness or irregular behaviour shown by the concerned workman while discharging his duties in the Bank. Charge No. 3 is, therefore, not proved as misconduct which has been proved by the first party-Bank.

11. Ex. 22, further depicts charge No. 5 and charge No. 6. Charge No. 5 is in respect of ownership of scooter No. GLP-599 which was purchased by the concerned workman, Shri Dave with the bank's assistance under the Bank's scooter loan scheme. This scooter was subsequently hypothecated with the Bank to one Shri Dineshandra Ramniklal Katarmal on 25-4-71 without liquidating the Bank's finance granted for the purchase of the said scooter. In respect of this, it was alleged against Shri Dave that he had misused this Bank's facility granted to him which was in contravention of the terms and conditions prescribed under the scheme. Thus, the Bank in his abortive attempt tried to indulge the concerned workman for the alleged gross misconduct. I have gone through the entire record of the inquiry and evidence of the

concerned workman. It is pertinent to note that the Bank has not examined any responsible officer including the main witness Shri Bakul Muchalla to show that the concerned workman Dave was financially involved in this transaction. The learned Advocate, Shri D. K. Vyas submitted that the concerned workman Shri Dave had already paid the entire loan amount of the scooter and, therefore, practically the concerned workman, Shri Dave had become the owner of that scooter. The instalments which became due, had already been paid by the concerned workman, Shri Dave. I have, therefore, no reason to hold that there is no brevity of contract between the concerned workman, Shri Dave and the first party Bank. For the purpose of proving the act of negligence being alleged by the Bank. It is, therefore, held that charge No. 5 is not proved or, inter alia, it can be said with all fairness that the behaviour of the concerned workman, Shri Dave cannot constitute the act of misconducts as alleged by the Bank.

12. The charge No. 6 contemplates that the concerned workman, Shri Dave had remained on unauthorized absence by overstaying his leave without prior permission of the first party-Bank. It was alleged that he had remained absent from 30-8-75 to 10-9-75 for which he had not submitted the leave report in advance. The Bank, therefore alleged that the concerned workman, Shri Dave had committed an act of wilful insubordination and disobedience of first party's lawful and reasonable order for being an act of gross misconduct. Further the learned Advocate, Shri D. K. Vyas invited my attention to the leave application submitted by the concerned workman for the purpose of sanctioning leave of his client. This is not disputed by the first party-Bank. It is, therefore, held that this behaviour of the concerned workman by remaining absent from work does not constitute any act of misconduct which is not required to be proved by him. The Bank has on the contrary falsely implicated the concerned workman, Shri Dave for charge No. 6 which does not form any act of misconduct.

13. After careful scrutiny of charge Nos. 1 to 6 as enumerated in the charge sheet Ex. 22, I am inclined to say that the order of dismissal dated 28-6-79 does not sustain at all. Even if this held to be one of misconduct than it can be conversely said that the order of dismissal Ex. 36 is one of the harsh punishment passed by the disciplinary authority of the first party-Bank it is shockingly disproportionate while appreciating the spirit and philosophy Section 11-A of the I. D. Act, 1947 subsequently added by the Indian Parliament therefore the order of dismissal at first stretch require to be knocked down and reserves to be dismissed ab initio. I am inclined to say that as referred above, the first party Bank has not suffered any financial loss and that the Bank has not suffered any irreparable loss which can be computed in terms of money. The Bank has not conveniently examined Bakul Muchhala, a witness whose evidence was badly required to appreciate various contentions raised by the first party-Bank in the charge sheet Ex. 25.

14. It is very significant to note that after perusal of the entire inquiry record placed by the first party-Bank before the Tribunal the departmental inquiry conducted against the concerned workman is in question and answer form. The leading questions were put in the mouth of the witness of the first party and all possible answers were attempted to have been tried by the Inquiry Officer, Shri Barot from the mouth of the witnesses. This cross examination of the Bank's witness and that too by the Inquiry Officer of the Bank is nothing but the role of triple nature i.e. witness, judge and prosecutor. The Bank has not examined any responsible person like Shri Bakul Muchhala and to prove the aforesaid six charges.

15. The learned Advocate, Shri D. K. Vyas then invited my attention to the dismissal order and urged the Appointing Authority in this case is the General Manager of the Bank who can only issue the dismissal order. In this case, the dismissal order is not signed by the General Manager and as such the same is bad in law. I do not agree with this submission of Shri Vyas for the simple reason that the learned Advocate Shri M. J. Sheth for the first party has rightly urged that the appointment of the concerned workman as a Clerk was in the year 1963 the period during which the present commercial banks were not nationalised by the Government. The dismissal order Ex. 36 was made on 28-6-79. Shri M. J. Sheth submitted that the law which

prevails on the date of his entry in the Bank service can only be considered to be relevant. Shri Sheth submitted that the law of the land on the particular date of cause of action of the concerned workman should be considered as a proper law. Shri M. J. Sheth has, therefore, stated that the appointment of the concerned workman, Shri Dave was in 1963, his services were terminated on 28-6-79. While considering this undisputed position the order of dismissal dated 28-6-79 is considered to be legal and proper.

16. The last point which requires to be considered is what should be the appropriate relief which the concerned workman is entitled to claim from the Tribunal. The learned Advocate, Shri Vyas for the concerned workman submitted that the charges 1 to 6 have not been proved by the first party-Bank. I agree with him, but still further he submitted that the concerned workman should be reinstated by the Bank with back wages at 100%. In this behalf, the learned Advocate of the Bank submitted vehemently that the concerned workman Shri Dave in case succeeds should not be paid any amount by way of back wages. The learned Advocate, Shri M. J. Sheth for the Bank invited my attention to the statement of claim at Ex. 5 and submitted before me that the applicant was appointed as an award staff employee by the General Manager in the year 1963. He was removed from the Bank's service on 28-6-79 as admittedly by the concerned workman, Shri Dave on page 3 of his statement of claim Ex. 5. Thereafter the concerned workman, Shri Dave filed appeal on 6-7-86 to the General Manager of the State Bank of Saurashtra and it was rejected by the General Manager on 9-1-87. His evidence Ex. 36 on the ground shows that he joined as an award staff clerk i.e. employed in 1963. He was issued charge sheet in 1976 and after conducting inquiry against him he was dismissed from service on 28-6-79 vide dismissal order Ex. 25. Before that he was put under suspension. Thereafter as admitted by him in para 3 of his evidence Ex. 36 he had filed civil suit and obtained interim stay from the Civil Court. This stay was vacated by the Civil Court. Therefore, he filed an appeal and obtained stay from the District Court Jamnagar his interim stay was vacated by the District Court on 15-1-82. Civil Court also dismissed his suit. Then on 26-2-1986 he made application Ex. 54 to the Central Labour Commissioner, Adipur. Thus, it stated the concerned workman, Shri Dave had not raised industrial dispute directly through the Labour Commissioner Central immediately after his dismissal on 28-6-79 vide Ex. 36. The learned Advocate, Shri M. J. Sheth for the Bank vehemently submitted that for the first time after his dismissal on 28-6-79 he raised an industrial dispute vide Central Government reference order Ex. 1 on 5-7-88. The statement of claim Ex. 5 was filed on 30-7-88. During the entire period of ten years the concerned workman, Sri Dave had chosen wrong forum by filing civil litigations as described above. The first party-Bank cannot be held liable for the delay and laches of the concerned workman, Shri Dave. As referred above he wasted period of ten years during the interim litigation i.e. by choosing wrong forum in the Civil and District Courts. For this gross negligence it can be said in other words that "the ignorance of law is not an excuse" even for one illiterate workman also. In this case, the concerned workman, Shri Dave was an award staff employee i.e. the literate employee being a Clerk in one of the nationalised Banks like he first party. Shri Dave is a literate and educated person. Therefore, accepting the canon of "ignorance of law is not an excuse" at its face value, I am compelled to hold that during the entire 10 years period the concerned workman, Shri Dave was dormant and passive for vindicating his legal rights for which the first party Bank which was dragged in civil litigation by Shri Dave cannot be penalised. Delay defeats equity. As such, therefore, the relief of the concerned workman, Shri Dave for back wages at 100% is rejected. This position is totally undisputed by both the parties. The concerned workman did not choose the forum of Central Labour Commissioner's office at the earliest. The concerned workman now succeeds in proving the very fact that none of the charges or any alleged misconduct is proved by the first party-Bank. I, therefore, direct the first party to reinstate the concerned workman Shri Dave on his original post with continuity of service without back wages. The consequent relief for the

back wages is hereby rejected. I, therefore, hold the issue Nos. 2 and 3 accordingly and pass the following order :

ORDER

The reference is partly allowed. The order of dismissal dated 28-6-1979, Ex. 36 is hereby set aside. The Managing Director of State Bank of Saurashtra, Head Office Bhavnagar is hereby ordered to reinstate the concerned workman, Shri S. D. Dave on his original post of Clerk being an award staff employee within a period of 30 days from the date of publication of this award. The consequent relief of the concerned workman for back wages is hereby rejected. The first party shall bear its own cost and pay Rs. 1,500 as cost to the concerned workman, Shri S. D. Dave.

Sd/- S. M. NAYAK,

SECRETARY

Ahmedabad,

Dated : 21st June, 1994.

R. S. SHUKLA, Presiding Officer

नई दिल्ली, 5 जुलाई, 1994

का. आ. 1666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेत्रल बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 4-7-94 को प्राप्त हुआ था।

[संख्या ए ल-12012/201/90-आईआर(बी-2)]

बी. के. शर्मा, डैस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 4-7-1994.

[No. L-12012/201/90-IR(B-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.
Dated the 3rd day of June, 1994

INDUSTRIAL DISPUTE NO. 48 OF 1992

BETWEEN :

The Vice President, Central Bank of India Employees Association, Vijayawada (representing the Workman (G. Tyagaraju). —Petitioner

—Petitioner

AND

The Regional Manager, Central Bank of India, Vijayawada-520 010. —Respondent

APPEARANCES :

Sri C. Suryanarayana & P. Bhaskar, Advocates for the Petitioner.

Sri Javeed Hussain, Dy. Chief Officer, Central Bank of India for Respondent-Bank.

AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/201/90-IR.B(II), dt. 23-10-1990 referred the following dispute under Section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947 between the management of Central Bank of India and their workmen to this Tribunal for adjudication :

"Whether the action of the management of Central Bank of India in terminating the services of Sh. G. Thyagaraju, Clerk is justified ? If not to what relief the workman is entitled ?"

This reference is registered as Industrial Dispute No. 48 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner Union is read as follows :

The petitioner submits that the Respondent placed the workman G. Thyagaraju under suspension by the Memo dt. 6-11-1986. It was alleged that it is "found" that the workman misappropriated the money handed over to him by several customers for deposit in their accounts and that he issued counter-foils of the pay in slips but did not account for the same in the Bank's books on the corresponding dates. It is clear from the Memo that investigation was not done either by the Regional Manager who passed the suspension order or by any outside agency and yet the Memo spoke of a "finding" that the workman misappropriated money. Notwithstanding the stipulations relating to subsistence allowance the workman was not paid either his salary for the first ten days of November, 1986 during which he functioned in the Bank as a Clerk nor was he paid the proportionate amount of subsistence allowance due and admissible to him for the remaining 20 days of November, 1986. Thus the Bank itself breached the stipulations in the suspension order dt. 6-11-1986 made by the employer. On 17-1-1987 the employer gave a further Memo along with an annexure there to alleging this time that it was "observed" that the workman indulged in misappropriation etc. and did not account for the monies entrusted to him on the same day. The Memo made additional allegations that he discounted two cheques at Tenali Branch of the Bank drawn on his HSS account for Rs. 200.00 on 23-8-1986 and for Rs. 100.00 on 15-10-1986 when the balances in his account, at Rowthulapudi Branch on those dates were only Rs. 12.23 and Re. 00.66 respectively. Similarly it was also alleged that the workman draw at Suryabagh Branch at Vizag TA Advance of Rs. 300.00 on his transfer to Rowthulapudi on 23-4-1985 and failed to repay the same when the transfer TA was sanctioned and conveyed to the Branch. It was further alleged that on 7-5-1985 and 27-9-1985 the workman drew large advances of Rs. 1500.00 and Rs. 800.00 respectively against T.A. "disproportionate to the requirement, in order to obtain undue pecuniary benefit". The employer also alleged that the workman misappropriated on 6-10-1986 the sum of Rs. 5.60 from the postage imprest ignoring the fact that the workman went on leave from 1-10-1986 and rejoined duty only on 6-10-1986 and that he did not even touch the postage account or the registers thereof after his rejoicing duty on 6-10-1986. On the contrary it was the Branch Manager who maintained and checked the account every day, hence he alone can be made responsible for the alleged misappropriation. Therefore the charge framed against the workman is obviously untenable and unsustainable. Subsequently the workman was given a charge sheet on 20-3-1987 with the same allegations as above. On 11-5-1987 the workman submitted reply to the charge sheet dt. 20-3-1987. It is thus clear beyond any shadow of doubt that the Bank is bound to launch prosecution against workman accused of fraud or embezzlement. Yet the Respondent chose to violate the above recommendation of the Sastry Award. He, therefore, submitted that the charge is unlaw-

ful and requested for its withdrawal. With regard to advances towards T.A. the workman submitted that where the employee fails to pay the balance if any, the employer is empowered to recover the same and that failure of the Bank to recover the amount cannot be converted as a charge against the employee to punish him. Such action is illegal. Since the workman was not paid this subsistence allowance till the end of October, 1987 the Petitioner Association raised on I.D. before the Asst. Labour Commissioner (Central), Visakhapatnam on 3-11-1987. This Disciplinary Authority, however, proposed to award the consolidated punishment of dismissal from Bank's service with immediate effect under Clause 19.6(a) of Bipartite Settlement and required the workman to make his submissions regarding the punishment before 17-12-1987 failing which final orders would be passed. The Petitioner Association submits that the inquiry is incompetent and unsustainable for the various reasons stated supra. Therefore, this Hon'ble Tribunal may be pleased to find that the entire disciplinary proceedings are illegal, null and void ab initio and that the workman is entitled to be reinstated in service with full back wages, continuity of service, protection of seniority and for all other benefits which are incidental and consequential to such reinstatement and to pass the Award accordingly.

3. The brief facts of the counter filed by the respondent Bank read as follows :—The word "found" has been mentioned in the suspension memo dt. 6-11-1986 basing on the Preliminary Investigation report of the Bank's Official who enquired into various misdeeds alleged to have been committed by petitioner. It is not necessary that investigation has to be done either by Regional Manager or outside Agency only. Various serious misdeeds alleged against the petitioner workman were investigated by Bank's Official and basing on his report the petitioner workman was placed under suspension. There is no breach of the stipulations mentioned in the suspension order dated 6-11-1986 as alleged in para 5 of the petition. The delay in payment of the subsistence allowance to the petitioner was due to the workman leaving the Headquarters Rowthulapudi without prior permission of the Respondent. This issue was settled by the Assistant Labour Commissioner (Central) Visakhapatnam v/d minutes of discussions held on 12-4-1988. On 27-6-1985 the workman submitted a TA Bill for Rs. 1,597.00 against the advance of Rs. 1,800.00 and the same was passed for 724.00 only on 12-7-1985. The Branch Manager has deposited as management witness I before the Enquiry Officer that he noticed shortage of Rs. 5.60 ps. in Postage imprest on 6-10-86 and the workman is accountable for the same. The action initiated by Disciplinary Authority against the workman was in breach of the Bipartite Settlement dt. 31-10-1986 is not true and correct. The workman abstained from participating in the enquiry proceedings for reasons best known to him dispute several opportunities given by the Enquiry Officer. The Respondent submits that the Enquiry Officer has intimated the petitioner fixing the preliminary sitting of the enquiry 13-5-1987 and the petitioner did not attend the enquiry on that date and on the subsequent dates of adjournment on 5-6-1987, 20-6-1987. To give all opportunity the Enquiry Officer adjourned the Enquiry for a 3rd time to 13-7-1987 with due notice to the petitioner. Since the petitioner failed to attend the enquiry on 13-7-1987 for reasons best known to him, the Enquiry Officer was constrained to conduct the enquiry ex parte on 13-7-1987 when Management Representative filed 73 documents and examined 7 witnesses for the management and concluded presentation of Management's case. The Enquiry Officer in his finding submitted to the Disciplinary Authority has held that charges Nos. 1, 2 and 5 as proved. The petitioner was given all opportunity to defend his case and principles of natural justice were followed by the Enquiry Officer in the conduct of the enquiry. The Petitioner was supplied with a copy of the Enquiry proceedings, copies of documents filed by the management and findings of the Enquiry Officer. The allegation that the punishment of dismissal from Bank's service inflicted on the petitioner is not commensurate and disproportionate to the gravity of misconduct is not correct. This Respondent submits that since the petitioner did not participate in the "de novo" enquiry and as no further evidence was produced by the Management Representative the Enquiry Officer had held that his earlier findings submitted to the Disciplinary

Authority would hold good for the "denovo" enquiry also. Since the objections raised by the petitioner to the show cause notice dt. 3-1-1989 are not tenable the Disciplinary authority passed orders awarding consolidated punishment of dismissal from Bank's service. The disciplinary proceedings are legal and valid. The petitioner is not entitled to reinstatement in service with full back wages etc. as prayed for in the petition. There are no merits in the petition and it deserves to be dismissed.

4. The point for adjudication is whether the action of the Respondent in terminating the services of Shri G. Thyagaraju, Clerk is justified.

5. No oral evidence have been adduced by both the parties. No documents were marked on behalf of the Petitioner-Union. But Exs. M1 to M58 were marked by consent on behalf of the Respondent-Bank.

6. As per the docket sheet of this Court, on 10-1-1994 when the matter is called both sides did not present. At this stage the clerk of the Respondent appeared before the Court. The matter finally posted to 7-2-1984. From 7-2-1994 two more adjournments were given. On 7-4-1994 petitioner reported not ready. Petitioner is taking time for the last more than 9 months. It is an old matter of 1992. I do not see any reason to adjourn the matter. The evidence of Petition closed. For the evidence of Respondent posted to 16-4-1994. Again two more adjournments were given. On 3-5-1994 Respondent asked time for the third time. It is an old matter of 1992. It is posted to this day final. Hence as a last chance posted to 5-5-1994. On 5-5-1994 Sri Jawid Hussain filed Memo of appearance on behalf of the Respondent and also filed 58 xerox copies of documents and list of witnesses to be examined on behalf of the Respondent. For the evidence of Respondent posted finally to 11-5-1994. On 11-5-1994 Exs. M1 to M58 are marked by consent. Respondent reported no evidence. For arguments posted to 23-5-1994. Two more adjournments were given. On 31-5-1994 it was posted to this day for hearing the arguments of both sides. Both sides did not argue the matter. Hence the arguments of both sides are closed. Hence for Award.

7. From the above facts it is seen that the Petitioner was called absent right from the beginning. The docket of 7-4-1994 clearly indicates that the petitioner is taking time for the last more than nine months and the evidence of the petitioner was closed. Since the petitioner was not forthcoming with claim, I do not see any reason of deciding the matter further. However it is seen that the petitioner filed their claim statement and the Respondent filed their counter but no arguments were made by both the parties. Now this Tribunal is left with no other alternative except to give a finding basing upon the claim statement and the counter.

8. The allegation of the Petitioner—that the workman was under suspension by Memo, finding that the workman misappropriated the money handed over to him by several customers for deposit in their accounts and that he issued counterfoils of the pay in slips but did not account for the same in the Bank's books on corresponding dates, that on 17-1-1987 the Respondent gave a further Memo along with an annexure there to alleging this time that it was "observed" that the workman indulged in misappropriation etc. and did not account for the monies entrusted to him on the same day. That the Respondent also alleged that the workman misappropriated on 6-10-1986 the sum of Rs. 5.60 from the postage imprest ignoring the fact that the workman went on leave from 1-10-1986 and rejoined duty only on 6-10-1986 and that he did not even touch the postage account or the registers thereof after his rejoicing duty on 6-10-1986 that subsequently the workman was given a charge sheet on 20-3-1987 with the same allegations as above, that on 11-5-1987 the workman submitted a reply to the charge sheet dated 20-3-87 that he submitted therein that in view of the fact that he was charged with misappropriation under charges 1 and 5, the Bank is bound to prosecute him or get him prosecuted and that it is not open to the Bank to take disciplinary action against him as it would be violative of para 503 of Sastry Award and requested that the charge sheet be rescinded, and thus the Respondent chose to violate the recommendation of the Sastry Award etc. etc.

1643 GI|94-3

9. The contention of the counter of the Respondent Bank that various serious misdeeds alleged against the Petitioner workman were investigated by Bank's official and basing on his report the Petitioner-workman was placed under suspension, that the workman has drawn two cheques for Rs. 200.00, and Rs. 100.00 on 23-8-1986 and 15-10-1986 respectively on his Saving Bank Account No. 788 with Routhulapudi Branch of the Respondent and got them discounted by Tenali Branch of the Respondent and received cash, while the balance in his S.B. A/c. 788 on the aforesaid dates Rs. 0.23 ps. and Rs. 0.66 paise only. It is evident that on the dates when he issued cheques and received cash from the outstation branch of the Respondent there was no sufficient balance in his Savings Bank Account, that on 27-6-85 the workman submitted T.A. Bill for Rs. 1,597.00 against advance of Rs. 1,800.00 and the same was passed for Rs. 724.00 only on 12-7-1985. It is clear that the workman availed T.A. advance disproportionate to his requirement in order to obtain undue pecuniary benefit. So finding the above acts of the workmen, the charge framed for gross misconduct under Clause 19.5(j) of the Bi-partite Settlement dated 19-10-1966 is tenable and sustainable. Further the Executive Director of Respondent Bank pursuant to the powers vested in him by the Chairman and Managing Director of the Bank has appointed the Regional Manager of the concerned region as the Disciplinary Authority. Hence the proceedings initiated against the workman by the Disciplinary Authority are legal. It is seen that the workman abstained from participating in the enquiry proceedings for reasons best known to himself despite several opportunities were given by the Enquiry Officer. Hence the action initiated by Disciplinary Authority against the workman was not in breach of the Bi-partite Settlement dated 31-10-1986, is true and correct. Moreover the Petitioner was given all opportunity to defend his case and principles of natural justice were followed by the Enquiry Officer in the conduct of the enquiry. It is seen that the petitioner was supplied with a copy of the enquiry proceedings, copies of documents filed by the Management and findings of the Enquiry Officer. Thus I see there is no infirmities on the part of the Respondent Bank in awarding punishment of dismissal from Bank's service inflicted on the petitioner workman and is proportionate to the gravity of misconduct committed by the petitioner workman.

10. In the result, the action of the Management of Central Bank of India in terminating the services of Shri G. Thyagaraju, Clerk is justified. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 3rd day of June, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined

For Workmen :

NIL

Witnesses Examined

For Management :

NIL

Documents marked for the Petitioner/Workmen :

NIL

Documents marked for the Respondent/Management :

(By Consent)

Ex. M1—Xerox copy of Challan dt. 9/10/9/86 for Rs. 300 for credit into Term Loan a/c of Mr. S. Tata Rao.

Ex. M2—Xerox copy of Counterfoil dt. 9/10/9/86 for Rs. 300 in Term Loan account of Mr. S. Tata Rao received and acknowledged by CSE.

Ex. M3—Xerox copy of Statement No. dated 16-10-1986 given by Shri S. Tata Rao addressed to the Branch Manager, Routhulapudi branch.

Ex. M4—Xerox copy of Counterfoil dated Nil for Rs. 50 in the IRDP loan account of Sri P. S. Rao, duly received and acknowledged by the CSE.

Ex. M5—Xerox copy of Challan dated Nil of Rs. 50 for credit of IRDP loan account of Mr. P. S. Rao.

Ex. M6—Xerox copy of Counterfoil dated 3-4-86 for Rs. 200 in Term Loan a/c. of Sri D. Satyam duly receipted and acknowledged by the CSE.

Ex. M7—Xerox copy of Counterfoil dated 1-5-86 for Rs. 200 in Term Loan account of Sri D. Satyam receipted and acknowledged by the CSE.

Ex. M8—Xerox copy of Counterfoil dated 5-7-86 for Rs. 200 in Term Loan account of Mr. D. Satyam, receipted and acknowledged by the CSE.

Ex. M9—Challan dated Nil for Rs. 200 for credit into Term Loan a/c. of Mr. D. Satyam.

Ex. M10—Xerox copy of counterfoil dated 1-3-1986 for Rs. 100/- in Term Loan account of Mr. S. V. Setty duly receipted and acknowledged by the CSE.

Ex. M11—Xerox copy of Challan dated 1-3-1986 Rs. 100/- for credit of Term Loan a/c of Mr. S. V. Setty.

Ex. M12—Xerox copy of counterfoil dated Nil for Rs. 100/- in IRDP Loan a/c. of Allu Demudu duly received and acknowledged by the CSE on 26-8-1986.

Ex. M13—Xerox copy of counterfoil dated 1-9-1986 for Rs. 100/- in IRDP Loan account of Allu Demudu.

Ex. M14—Xerox copy of Challan dated 1-9-1986 for Rs. 100/- for credit into IRDP Loan account of Allu Demudu.

Ex. M15—Xerox copy of counterfoil dated 24-3-1986 for Rs. 100/- for credit of Gold Loan a/c of T. Adinarayana duly received and acknowledged by the CSE.

Ex. M16—Xerox copy of Counterfoil dated 17-4-1986 for Rs. 600/- in Gold Loan a/c. of Shri T. Adinarayana duly received and acknowledged by CSE.

Ex. M17—Xerox copy of Challan dated Nil for Rs. 100/- for credit into Gold Loan a/c. of Shri T. Adinarayana.

Ex. M18—Xerox copy of Counterfoil dated Nil for Rs. 200/- in Term Loan account of Mr. P. Appala Raju duly received and acknowledged by CSE.

Ex. M19—Xerox copy of Counterfoil dated 24-2-1986 for Rs. 100/- for credit of IRDP Loan account of A. Satyanarayana, received and acknowledged by CSE.

Ex. M20—Xerox copy of counterfoil dated 4-6-1986 for Rs. 50/- for credit of IRDP Loan account of G. Swamynaidu duly receipted and acknowledged by CSE.

Ex. M21—Xerox copy of Counterfoil dated 10-6-1986 for Rs. 50/- in IRDP Loan account of Shri G. Swami Naidu receipted and acknowledged by the CSE.

Ex. M22—Xerox copy of counterfoil dated Nil for Rs. 50/- in IRDP Loan a/c. of G. Swami Naidu duly receipted and acknowledged by the CSE.

Ex. M23—Xerox copy of Challan dated 10-6-1986 for Rs. 50/- for credit of IRDP Milch cattle a/c. of Shri G. Swami Naidu.

Ex. M24—Xerox copy of counterfoil dated 15-2-1986 for Rs. 200/- in IRDP Loan account of Illa Satyanarayana, duly receipted and acknowledged by CSE.

Ex. M25—Xerox copy of Challan dated Nil for Rs. 200/- for credit into IRDP Loan a/c. of Shri J. Satyanarayana.

Ex. M26—Xerox copy of Challan dated Nil for Rs. 100/- for credit into IRDP Loan a/c. of K. Maridaiah.

Ex. M27—Xerox copy of the Challan dated Nil for Rs. 100/- for credit of IRDP Milch cattle account of B. Appala Naidu.

Ex. M28—Xerox copy of Challan dated 2-7-1986 for Rs. 300/- for credit of RD a/c. No. 41 of K. Pothu Raju.

Ex. M29—Xerox copy of Challan dated 11-9-1986 for Rs. 200/- for credit of RD a/c. 41 of K. Pothu Raju.

Ex. M30—Xerox copy of Challan dt. 11-9-86 for Rs. 100 for credit into RD a/c. No. 41 of K. Pothu Raju.

Ex. M31—Xerox copy of Pass Book of RD A/C. No. 41 in the name of K. Pothu Raju.

Ex. M32—Xerox copy of statement of account of RD A/C. No. 41 in the name of K. P. Raju.

Ex. M33—Xerox copy of Statement dt. 16-10-86 given by Shri K. Pothu Raju addressed to the Branch Manager, Routhulapudi.

Ex. M34—Xerox copy of Challan dt 2-8-86 for Rs. 100 for credit into RD a/c. No. 47 of K. Sanyasi Rao.

Ex. M35—Xerox copy of Challan dt. 11-8-86 for Rs. 500 for credit into RD a/c. No. 47 of K. Sanyasi Rao.

Ex. M36—Xerox copy of Pass Book of RD a/c. No. 47 of K. Sanyasi Rao.

Ex. M37—Xerox copy of Statement of A/c. of RD a/c. No. 47 of K. Sanyasi Rao.

Ex. M38—Xerox copy of Statement dt. 16-10-86 given by Mr. K. Sanyasi Rao addressed to the Branch Manager, Routhulapudi.

Ex. M39—Xerox copy of Pass Book of RD a/c. No. 52 of K. Nagamani (Joint a/c.).

Ex. M40—Xerox copy of Statement of a/c. of RD a/c. No. 52 of K. Nagamani (joint a/c.).

Ex. M41—Xerox copy of Statement dt. Nil given by K. Suribabu addressed to the Branch Manager, Routhulapudi.

Ex. M42—Xerox copy of Pass Book of HSS A/c. No. 870 of Mr. D. Raja Rao.

Ex. M43—Xerox copy of Statement of A/c. of HSS A/c. No. 870 of Mr. D. Raja Rao.

Ex. M44—Xerox copy of Statement dt. 11-10-86 given by Sri KBV Balakrishna addressed to the Branch Manager Routhulapudi Branch.

Ex. M45—Xerox copy of Challan dt. nil for Rs. 500 for credit of HSS A/c. 87 of Mr V. Satyanarayana.

Ex. M46—Xerox copy of statement dt. 17-10-86 given by Mr. V. Satyanarayana of BB Patnam, addressed to the Branch Manager, Routhulapadi Branch.

Ex. M47—Xerox copy of Challan dt. Nil for Rs. 200 for credit of HSS A/c. 67 of A. Tatabbai.

Ex. M48—Xerox copy of Statement dt. 28-11-86 given by Mr. E. Gajendarayudu with 17 credit challans of HSS account.

Ex. M49—Xerox copy of Duplicate Manifold I B XII No. 17488, dt. 26-4-85 of Suryabagh branch for Rs. 300 on Routhulapudi Branch.

Ex. M50—Xerox copy of TA Bill of Mr. G. Thyagaraju dated 27-6-85 for Rs. 1597 passed for Rs. 724 on 12-7-85.

Ex. M51—Xerox copy of HSS withdrawal dt. 23-8-86 in HSS A/c. No. 788 for Rs. 200 drawn by Mr. G. Thyagaraju.

Ex. M52—Xerox copy of HSS withdrawal dt. 16-10-86 in HSS A/c. No. 788 for Rs. 100 drawn by Mr. G. Thyagaraju.

Ex. M53—Xerox copy of HSS withdrawal dt. 11-8-86 in HSS A/c. No. 788 for Rs. 530 drawn by Mr. G. Thyagaraju.

Ex. M54—Xerox copy of Statement of HSS A/c No. 788 of Sri G. Thyagaraju

Ex. M55—Xerox copy of Certificate dt. 14-5-87 issued by Branch Manager, Routhulapudi Branch as to the balance available in HSS A/c. of Mr. G. Thyagaraju.

Ex. M56—Xerox copy of letter No. ELR : 87 : 102 dt. 2-4-87 of Eluru branch alongwith an explanation dated 2-4-87 of Mr. B. Sairam Prasad, former Branch Manager of Routhulapudi branch.

Ex. M57—Xerox copy of Disciplinary Proceedings (10 pages).

Ex. M58—Xerox copy of Findings of Enquiry Officer (7 pages).

नई दिल्ली, 6 जुलाई, 1994

का. आ. 1667.—ऑर्डोरिंग विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार परिचम रेलवे बम्बई के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑर्डोरिंग विवाद में केन्द्रीय सरकार ऑर्डोरिंग अधिकरण नं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-94 को प्राप्त हुआ था।

[सं. एल. 41011/41/91—आई आर (डी. प.)]

वी. के. शर्मा, डैस्क अधिकारी

New Delhi, the 6th July, 1994

S.O. 1667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure to the industrial dispute between the employers in relation to the management of Western Railways, Bombay and their workmen, which was received by the Central Government on the 5-7-94.

[No. L-41011/41/91-IR(DU)]

V. K. SHRAMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse,

Presiding Officer

Reference No. CGII-2/48 of 1991

Employers in relation to the Management of Western Railway, Bombay

AND

Their Workmen

APPEARANCES :

For the employers : Shri R. N. Salunke, Sr. Clerk

For the workman : Shri M. B. Anchan, Advocate.

INDUSTRY : Railways

STATE : Maharashtra

Bombay, dated the 16th day of June, 1994

AWARD

The Central Government, Ministry of Labour, New Delhi by its Order No. L-41011/41/91-IR(DU) dated 8-12-11-94 referred industrial dispute to this Tribunal under Section 10 of the Industrial Disputes Act in the following terms :

"Whether the action of the management of Western Railway, Bombay in not calling the seniormost candidate in the viva voce test for selection as Clerk and depriving them for promotion prospects to the affected candidate is justified ? If not, what relief he is entitled to ?"

2. The parties to the dispute are the General Manager, Western Railway and the Divisional Secretary, PRKP. Both were duly served. The Union appeared through advocate Shri M.B. Anchan on 20-8-1992. Today the advocate filed an application (Exh. W/2) contending that the union does not wish to contest the above Reference. Hence, it may be disposed of. There is no written statement as the claim was not filed. I accept the application for disposal of the Reference and pass the following order :

ORDER

The Reference is disposed of.

Parties to bear their own costs

S. B. PANSE, Presiding Officer

नई दिल्ली, 6 जुलाई, 1994

का.ग्रा. 1668.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे के प्रबन्धतांत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण नं. 1, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-94 को प्राप्त हुआ था।

[सं. एल.-41012/68/91-आई आर (डी.यू.)]

वी. के. शर्मा, डैस्क अधिकारी

New Delhi, the 6th July, 1994

S.O. 1668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Railway and their workmen, which was received by the Central Government on 5-7-94.

[No. L-41012/C8/91-IR(DU)]
V. K. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar,
Presiding Officer.

Reference No. CGIT-15 of 1992

PARTIES :

Employers in relation to the management of Central Railway.

AND

Their workmen

APPEARANCES

For the Management—Shri P. R. Pai, Advocate.

For the Workman : Shri M. B. Anchan, Advocate.

INDUSTRY : Railways * STATE : Maharashtra

Bombay, dated the 16th day of June, 1994

AWARD

By letter dated 4-3-1992, the following dispute has been referred to this Tribunal by the Government of India, Ministry of Labour, New Delhi, for adjudication under Section 10(1) (J) read with Section 2-A of the Industrial Disputes Act, 1947 (for short Act).

"Whether the action of the management of Central Railway, Bombay in terminating the services of Shri Dinesh Kumar Pandey, Mobile Booking Clerk of Kanjurmarg Station, w.e.f. 31-7-1984 is justified ? If not, what relief he is entitled to and from what date ?"

2. The undisputed position is, that Shri Dinesh Kumar Pandey came to be appointed as a Mobile Booking Clerk with effect from 31-3-1983, at Kanjurmarg Station, by the Asst. Personnel Officer, Central Railways, Bombay V. T., on daily wages of Rs. 15/- He worked continuously until his services were terminated, with effect from 31-7-1984. His grievance is that no reasons were assigned and no notice was given before terminating his services and this amounted to retrenchment and therefore, he was entitled to one month's wages in lieu of notice, and compensation under law. Since this was not done, according to him, there was contravention of the provisions of Section 25-F of the Act. He should be therefore, deemed to be in continuous service, and should be paid full back wages.

3. He made several representations but, they had no effect. He approached the Madhya Railway Karamchari Sangh, and the Asst. Labour Commissioner (Central) admitted the dispute in conciliation. But, due to the rigid approach of the Railway authorities, the conciliation failed and hence the present reference.

4. He has been re-engaged as Mobile Booking Clerk with effect from 2-10-90 on daily wages of Rs. 33.92. He has been working continuously since then. His services are being utilised by the Railway authorities in the absence of regular Booking Clerks, and he has to work in daily and night shifts, in spite of which, he has not been paid regular wages and allowances in the grade of Rs. 975-1540.

5. According to him, he was engaged on casual basis for a period of one year initially, with effect from 31-3-1983, and continued to work as such, upto 31-7-1984. He attained the status of Regular Grade Employee if he works continuously for 120 days. He has thus attained the status of temporary staff under the provisions of the Indian Railways Establishment Manual, and he is, therefore, entitled to wages from that date till today.

6. Prayer for reinstatement with full back wages, continuity and other consequential benefits has been made.

7. Written statement has been filed on behalf of the Railway Administration. The contention is that, the reference is not maintainable, is stale, and time barred and that there is no cause of action.

8. It is admitted that he was appointed as a Mobile Booking Clerk on daily wages of Rs 15/- and posted at Kanjur Marg Station. It is also admitted that he worked with effect from 1-4-1983, till 1-8-1984, when alongwith 33 others his services came to be terminated. They were not treated as regular Railway Employees and therefore, the question of payment of back wages or continuity of services will not arise. The Railway Board, thereafter issued instructions on 27-11-1986, not to engage any more persons on daily wages or on honorarium rate basis.

9. It has been further contended that, he has been now re-engaged with effect from 2-10-1990 as a Mobile Booking Clerk, on a remuneration of Rs. 32.92 per day, and working continuously. It is admitted that his services have been utilised against the absence of Regular Booking Clerk. However, it is denied that he is entitled to the regular wages of grade of Rs. 975-1540 it is stated that he was engaged to be additional cash of Summer on remuneration per day, and thus, will not be entitled to the benefits applicable to the Casual Workers working in the Railways. It is further contended that the Railway Board has considered the Mobile Booking Clerk who have worked for more than 3 years, including

the present workman, for regular absorption in Railways, if they are found fit, by the Screening Committee. It is further contended that he has not been retrenched and therefore, there is no contravention of Section 25-F of the Act. The allegation that he worked in the capacity of Casual workers is also denied. Prayer for rejection of the reference, and judgment in favour of the Railway Authorities is made.

10. I have heard the learned counsel Mr. Anchan on behalf of the workman, and Mr. P.R. Pai on behalf of the Railway Administration. Written arguments have been also submitted on behalf of the parties.

11. In respect of the undisputed position, that he was in continuous service with effect from 31-3-1983 till 31-7-1984. I find that the Railway Administration has hardly any defence to put forth. It is the case, according to the workman, that a person being in continuous service for one year or more, is entitled to the protection of Section 25-F of the Act, inasmuch as the termination would amount to retrenchment. In this connection, reliance has been placed upon the decision of the Supreme Court of India, in the case between Mohanlal vs. Bharat Electronics, reported in 1981-II L.L.I, page 70. That decision, with respect squarely applies in the present case. In this case also, the workman is admittedly in continuous service for one year under Section 25(b) of the Act. The position is not much in dispute. The services have not been terminated, but, it came to an end as a result of the completion of the temporary period. It is seen that the termination of services is not a case of retirement on attainment of the age of superannuation, it is also not a case of penalty inflicted by day of Disciplinary Action. The workman himself admitted that he was initially appointed for a period of one year, but, continued to work thereafter, and therefore he was entitled to the protection of Section 25-F of the Act, dealing with retrenchment. It is not in dispute, that provisions of Section 25-F have not been complied with, inasmuch as one month's notice has not been given to him in writing indicating the reasons for termination of his services, nor he has been paid one month's wages in lieu of such notice. It is not also a case where the retrenchment compensation has been paid to him. If that is the position, this order of termination of services is, surely an order of retrenchment, and since it is without compliance of the provisions of Section 25-F of the Act, it is improper, invalid, illegal, and deserve to be quashed. The effect is that he continues to be in service and he would be entitled to back wages and continuity of service.

12. It is not necessary to refer to another decision relied upon in the case of Robert D'Souza, vs. Executive Engineer Southern Railways, reported in 1982-ILLJ, page 330. It is on the same point.

13. I may mention that the Railway Administration came out with a case, that he was appointed to clear the work load of summer rush, and that his services came to be terminated alongwith 33 others. I do not think it is necessary to deal with this aspect of the case, because I have already held that this is a case of retrenchment and that too without compliance of the provisions of Section 25-F of the Act. It is also however rather difficult to accept the contention on behalf of the Railway Administration in this behalf. Because, though he was appointed initially for a period of one year, he was continued beyond that period without any break i.e. till next summer, and for two more months thereafter upto 31-7-1984. Thereafter, he has been engaged once again in October, 1990, and it cannot be stated that all this was for clearing the "summer rush".

14. It is urged that the reference is not maintainable. I do not see how it could be said that the reference is not maintainable. A dispute arose, which could not be solved in conciliation, and therefore, the present reference has been made by the Government of India, Ministry of Labour, under Section 10(1)(d) of the Industrial Disputes Act, 1947, calling upon this Tribunal to adjudicate upon it.

15. It is further contended that the reference is stale and barred by limitation. I do not think it could be so urged. It seems that he made representations since after his termination in July 1984, and he has mentioned the dates as 3-12-1984, 20-7-1985, 23-1-1986, 23-7-1986 and 18-8-1988. It appears that thereafter, on 2-10-1990, he was again engaged and the present reference has been made in 1992, after receipt of the failure report from the Regional Labour Commissioner (Central). It is therefore, not possible to hold that the present reference is stale and time barred, justifying its rejection on that ground.

16. The next argument advanced is, that he accepted the fresh appointment with effect from 2-10-1990 as Mobile Booking Clerk, on daily wages of Rs. 33-92, and therefore, it cannot be contended that he has been continuously working and seek reinstatement. It is not a case of reinstatement in the first instance. It is a case, where the services of the workman concerned have been terminated. Obviously he can accept the appointment with effect from 2-10-1990 as Mobile Booking Clerk.

17. It is then finally urged that, the present reference has been made without application of mind. A decision has been taken by the Railway Board to absorb those Mobile Booking Clerks, who have been working for 3 years before 17-11-1989 and are to be considered for regular employment. The applicant workman in the present reference has been re-engaged with effect from 2-10-1990. But, this is not the point for adjudication. Before me, the point referred for adjudication is, whether the action in terminating the services with effect from 31-7-1984 is justified, and I answer the point in the negative, holding that the action of the Railway Board is illegal, unjust, and improper, and the result would be that the workman is entitled to reinstatement with full back wages, and continuity in service and other consequential benefits.

Award is accordingly, with no order as to costs.

R. G SINDHAKAR, Presiding Officer

नई बिल्ली, 4 जूलाई, 1994

का. आ. 1669—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्यासरण में, केन्द्रीय सरकार एस डी ओ (पी) के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-94 को प्राप्त हुआ हुआ था।

[सं. एल.-40012/89/89—टी 2 (बी) (भाग)]

के. वी. बी. उर्ना, डेस्क अधिकारी

New Delhi, the 4th July, 1994

S.O 1669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SDO (P), Bikaner and their workmen, which was received by the Central Government on 1-7-1994.

[No. L-40012/89/89-D.II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

अनुवाद

केन्द्रीय औद्योगिक न्यायालिकरण, जराहर

ਕੇਸ ਨੰ. ਸੀ. ਆਈ. ਟੀ. 11/90

ईकरेंम : केन्द्र भरतीर, प्रम मंत्रालय, नई दिल्ली का आदेश प्रमांक प्ल-
40012/89/89-डी (बी) दिनांक 31-1-90

श्री अता उन्ना याह पूर्व श्री अकबर शाह द्वारा भग्न मिह मेंरं र
महामंती, रेस्वे केझराम लेवर गुणिमन (याग स्कृत के पास)
श्रीकान्तेर, राजधान . . . प्रार्थी

३८४

1. दिवीजनल इंजीनियर्स फोन्स, टेलीपोर्ट एसर्सेंज और्डर्स, मदर थाने के पास, बीकानेर ।
2. सब इंद्रियनल बैंकीमर फोन्स, टेलीफोन एसर्सेंज आर्किम, मदर थाने के पास, बीकानेर ।
3. सहायक अधिकारी, मार्केटिंग एंजीनर, बीकानेर । . . स्प्रार्थीगण

二〇〇〇年

माननीय न्यायाधीण श्री केण्ठल० न्याम, आर.एन.जे.एम.
प्रार्थी की ओर से: श्री ग्रंथविद्वत् सिंह

अप्रार्थीगण की आंख से :	कोई हार्गिर नहीं
दिनांक अंश :	19-5-94

୫୮୧୯

कन्द्र सरकार हारा निम्न विवाद आधारण पर है इस व्यापारधकरण में प्रेरित किया गया है :

"Whether the action of the management of SDO (P) Bikaner is justified in terminating the services of Shri Ataula Shah from 17-7-86? If not, to what relief is the workman entitled?"

2. दोनों पक्षों को नोटिस जारी किये गये। श्रमिक ने जो बेनेम पेश किया है उसके अनुसार उसने विपक्षी मं. 1 से तीन के अधीन 31-1-84 से 17-7-86 तक दैनिक बेनेम भोगी कर्मनारी के रूप में कार्य किया था। व 17-7-86 के पश्चात् उन्हें मीडिक आंदेश में मेहम मूल्य कर दिया गया। व वास्तव मूल्य के मध्य धारा 25-एक श्रीधोगिर विवाद प्रधिनियम 1947 (जिसे तत्त्वान्तर श्रधिनियम गंवोधिन किया जायेगा) के तहत ना तो मुश्वाज़ दिया गया व ना ही धारा 25-जी के अनुसार वरिष्ठता सूची प्रकाशित की जाकर श्रमिक की गोवा मुक्ति की तरीकाई की गई। श्रमिक के अनुसार 1-8-84 से उसकी बेवारा विपक्षी मं. 3 के गास स्थानान्तरित कर दी गई जो कि विपक्षी मं. 1 व 2 से गंवोधिन मण्डल है तथा विपक्षी मं. 3 के मीडिक आंदेश से वापर श्रमिक की बेवारा 1-1-86 से विपक्षी मं. 2 के गास स्थानान्तरित की गई।

3. विपक्षीयण में 1 व 2 को ओर से जयाव्र प्राप्त हुआ है जिसमें यह दर्शाया गया है कि श्रमिक ने दैनिक बेतन भीती फर्मचारी के स्वप्न में जयाव के पद सं० 2 में उल्लिखित विवरण के अनुसार जनवरी 1984 में जुलाई 1984 तक 102 दिन कार्य किया थाव हसके पश्चात् प्रश्न व 1986 रो जुलाई 1986 तक 70 दिनांक काम किया था व इस प्रकार उसने कथित सेवा मुक्ति से पूर्व एक वर्ष में 240 दिन में अधिक काम नहीं किया व हम कारण वह धारा 25-एफ, 25-जी व 25-एफ अधिनियम के प्रावधारों का लाभ प्राप्त करने का अधिकारी नहीं है। जुलाई 1984 के पश्चात् विपक्षी गं. 3 के पास काम करने का जो तथ्य श्रमिक ने बताया है उसके निप. विपक्षीयण 1 व 2 का कथन है कि उनका कोई भी संवेदन विपक्षी स. 3 में नहीं है तथा विपक्षी गं. 3 पर स्वतन्त्र प्रणालीक मण्डल है इस कारण यदि श्रमिक ने वहां कार्य किया भी है तो भी उस अधिनियम

को विपरीतगत में 1 व 2 के यथां कार्य करने की अवधि में नहीं जोड़ा सकता। उनका यह भी कथन है कि शर्पिन को मेवाएं कमी भी विद्यमान में, 3 के यथां स्थानान्तरित नहो की गहरी क्षमता कि उन्हें ऐसा करने का अधिकार नहो था। यिन्होंने म० 3 को गाँव से कोई जवाब प्राप्त नहीं किया।

4. अभिना की ओर से मौखिक साक्षिय के रूप में अभिना का शब्द पक्ष प्रस्तुत किया गया त विषयोंगत 1 व 2 की ओर से ओ एन.के. पावा को शाश्वत पक्ष साक्षिय के रूप में प्रस्तुत किया गया है। इसके अतिरिक्त अभिना ने समझौते वार्ता विकल द्वारा पर सुविधा का पक्ष प्रदर्श उत्तरू-प्रस्तुत किया है। विश्वित वार्ता द्वारा पर्ती की ओर से पत्रावर्ती पर उत्तरव्वच है। मौखिक वर्तम के गवर्नर विवोंग को ओर से कोई भा उत्तिष्ठा नहीं हुया।

किसी भी समय श्रमिक की सेवाएँ विष की से ३ के यहाँ प्रशासनात्मक नहीं की गईं। यथा हमें जिराफ़ हुई है उसमें इव संबंध में कोई भी प्रश्न नहीं पूछा गया है। ऐसी स्थिति में श्री पाषा ने प्रशासनिक नियन्त्रण व दोनों मण्डल की स्थिति के संबंध में जो साक्ष्य दी है उसको अस्थीकार करने का कोई भी आधार नहीं है विशेषकर उस स्थिति में यजक श्रमिक को उस संबंध में कोई भी अवित्त विषयमनीय जानकारी नहीं है। श्रमिक ने इस संबंध में संबंधित किनारा भी विचार का कोई अनुकूल यह साधित गर्व के लिये न कर सका है त ही नलव करवाया है कि विषयक से २ व ३ एक ही मण्डल के वो प्रशासनिक भाग हैं इसलिए यह माना जाता है कि श्रमिक ने १-६-८४ से दिक्षिती १-५-८६ विषयक से ३ के बीच यहाँ जो नाये दिये रखे १०५ के दिक्षिती से २ जैसे यहाँ यिहेगये नाये की अवधि के साथ शामिल नहीं किया जा सकता।

6. अधिक ने स्वयं प्रानेशापथ पत्र में यह साना है कि प्रारम्भ में उम्मे 30-7-84 से 1-8-84 तक व पुनः 1-4-86 से 17-7-86 तक निपांत्री सं. 2 के यहाँ कार्य किया था। जो विवरण विपक्षीयण ने जश्वर व शाय पत्र में दिया है उम्मे अनुग्रह 1-4-86 से 17-7-86 को अवधि में अधिक ने निपांत्री ग. 2 के प्रयोग कृत 20 दिन तक काम किया था। इस रिपोर्ट को धीर्घ से चुनौती नहीं दी है बल्कि उम्मे कथा में इसकी पुष्टि होती है। जूलाई 1984 से मार्च 1986 के अवधि से अधिक विपक्षीय मं. 2 के यहाँ कार्यक्रम नहीं था हमलिंग उम्मे अवधि के निकावने के पश्चात् तथिंग भेजा गया था इसकी तिथि में एक लंबे की अवधि में गाल 70 दिन निपांत्री ग. 2 के यहाँ धीर्घ वारा कार्य करने का दृष्ट गतिहास है यहाँ स्थिति में धारा 25-एफ के प्रावधान अधिक के मामते में यहाँ गती होती है। मात्र इस से कथित सेवा मुक्ति के समय एक भौतिक का नामिन व मुक्तिशाली अधिक का नहीं दिया गया है।

7. विपक्षीय सं. 1 व 2 ने जश्वर में यह अभिकथि किया है कि 17-7-86 को अधिक अवधि नहीं नीकरी छोड़कर चला गया था व इस कारण 1-8-86 से उम्मे नाम समर्पित थे काट दिया गया था जश्वर के अधिक के अनुग्रह उसे मीडिक आदेश से 17-7-86 से हटा दिया गया था। पूर्व में जो धारा 25-एफ के प्रावधान के संबंध में विवेचन किया गया है उम्मे देखते हुए इस विवाद का कोई मतलब नहीं रहता कि अधिक यो 17-7-86 से भेजा थे हटा दिया गया अवधि वह रवयं नीकरी छोड़कर भला गया परन्तु इसके वावजूद ऐश्वर्यिक महाय के लिए तथा मामते को निर्णय हेतु अंतिम रूप देते के लिए इस विष्टु पर विचार किया जाता है। दोनों पक्षों के अभिकथितों व शाय के अनुमान मात्रा विधि यह है कि अधिक को नियन्त्रित य कथित रूप से भेजा गुविन थी व अंदराही विधित अदेश से नहीं की गई थी। ऐसी विधि में भेजा मुक्ति मीडिक आदेश से विवेचक द्वारा किया जाना अस्वामाविक त असंमावित नहीं माना जा सकता। विपक्षीयण की ओर से श्री एन.के.पावा ने जो गप्प पत्र दिया है उम्मी जिरह से यह दाइट है कि वे संविधित मालिक में 3-8-91 से कार्यरूप थे व उन्होंने यह भी स्वीकार किया है कि उन्हें इस भामते की जानकारी वायालिय रिकार्ड के साधारण पर ली है। ऐसा कोई भी अधिकारी मालिय में नहीं आया है जिसको अधिक की भेजा गुविन अवधि विवाद को भी यह नोट अंकित नहीं किया गया कि अधिक 17-7-86 से रवयः ही काम पर नहीं आ रहा है। साथ्य में संविधित मालिकों को भी पेश नहीं किया गया है। इसके विपरीत अधिक ने गप्प पत्र में यह कहा है कि उम्मी भेजाएं मीडिक आदेश से 17-7-86 के पश्चात् समाप्त कर दी गई थी व इस संबंध में उम्मे नवधित अधिकारियों के पास मीडिक आदेश भी की थी। नियोजक की इस कार्यवाही गे अनुसन्धान द्वारा और्योगिक विवाद अधिक भी ओर से उठाया गया था व इस संबंध में समझौता वार्ता भी दूई थी जो असफल होने के पश्चात् यह विवाद व्यायाधिकरण में प्रेषित हुआ है। समझौता वार्ता के असफल होने के अविवेदन प्रदर्शन उद्यम-1 प्रस्तुत हुआ है। उपलब्ध मालिय व संविधित परिवर्तियों में यह गाना जाना है कि अधिक की भेजाएं नियोजक द्वारा 18-7-86 में मीडिक आदेश में भामते की गई थी।

8. अधिक ने अपने वरेम में यह बताया है कि उम्मी भेजा गुविन के मामते में नियोजक द्वारा धारा 25-जी व 15-एफ की पालना नहीं की गई हमलिंग, उम्मी भेजा मुक्ति का आदेश अवैध है। धारा 25-एफ अग्नियम के प्रावधान नाम नहीं होने के अनुवृद्ध धारा 25-जी व 15-एफ के प्रावधान नाम होने हैं। इस संबंध में माननीय राजस्थान उच्च व्यायालय द्वारा एन.आ.मिलिन रिट.न. 3585/89 में दिये गये निर्णय के दिनांक 13-11-90 को प्रभागित प्रतिलिपि अधिक की ओर से प्रस्तुत की गई है। इसमें यह आवादित किया गया है कि धारा 25-जी

व 25-एफ के प्रावधान धारा 25-एफ के प्रावधानों से पूर्ण रूप से व्यत्यक्त है तथा जिस अधिक ने 240 दिन काम नहीं किया है उम्मी भेजा गुविन धारा 25-जी के प्रावधानों का पालना किये विवाद नहीं को जा सकता।

9. अधिक ने कलेम में माव यह कहा है कि विभाग द्वारा कोई विलिंग सूची नहीं बनाई गई थी तथा उम्मी भेजा मुक्ति किया उम्मे कलिंग अधिक मालिकों पर कार्यवत् थे। फिर भी इस प्रकार के अधिक का नाम नहीं बनाया गया है। मालिय में भी जो गप्प पत्र अधिक ने प्रस्तुत किया है उम्मी भेजा ने इस पत्र का सम्बोधन कान द्वारा बताया है। विभाग का गोई भा. 1/सू.8 द्वारा नाम नहीं बनाया गया है। थोड़ा के आजा भेजा जो विवाद का गई है उम्मी भायह नहीं पूछा गया है। यह ए.प.के आजा भेजा जो विवाद का गई है उम्मी भायह नहीं पूछा गया है। इसके विवरांत जिरह में 4-7-84 के संबंध में थी आजा भेजा से प्रश्न पूछा गया है जिसके विवर उम्मी भेजा विवाद है। यह विवाद एन.एफ.के कलिंग कर्मचारी कार्यवत् थे व उम्मी भेजा अधिकों के नाम जिरह में सुमारे के रूप में पूछे गये हैं। इसके विवरांत जिरह में 4-7-84 के संबंध में थी आजा भेजा से प्रश्न पूछा गया है जिसके विवर उम्मी भेजा विवाद है। यह विवाद एन.एफ.के कुछ सभी काम पर होते हैं। यहाँ भी यह सुमारे नहीं दिया गया। 4-7-84 को अधिक ने कलिंग कर्मचारी कार्यवत् पर थे। इनके अवावा जो विवाद प्रेषित किया गया है उम्मे अनुमान अधिक जो सुमित 17-7-86 को बताये दुएं उम्मी भेजा को तथा कर्मचारी का आजा भेजा जो विवादप्रयोग के ममद है। जूलाई 1984 में अधिक ने भेजा भेजा से हटाने का अधिकथित करेम में नहीं किया है वर्तिका यह कहा है कि उम्मी भेजा उम्मी भेजा भेजा विवाद की विधि की गई थी। आजा भेजा जो विवाद में यह भा. आजा है 4-7-84 के पश्चात् कोई भी नई भर्ती जी को गई थी। इसके अधिकरण जोई भिरह भी पावा से नहीं हुई है। दोनों पक्षों के अधिकरणों व प्रस्तुत गाल्य में यह गावित मात्रते हां अवावा नहीं है कि अधिक को 17-7-86 से भेजा मुक्ति किया गया उम्मी भेजा उम्मी भेजा नियोजक द्वारा धारा 25-जी के प्रावधानों की अस्वीकारी की गई है। अध्यक्षी तत्पात्रक या विवित विवाद मामते में विचारणीय नहीं है।

10. प्रेषित विवाद का अधिकथित इस प्रकार किया जाता है कि अधिक अता उल्लंग आह का दिनांक 17-7-86 से एन. डा. श्री. फॉर्म, बीकानेर द्वारा भी गई भेजा मुक्ति की कार्यवाही उनिंग एवं वैध है तथा अधिक कोई भी गहन पाने का आवश्यकीय नहीं है।

11. अवाव को पांत केन्द्र सरकार को प्रकाशनार्थ तियमानुमार भेजी जावे।

के. एन. आजा, न्यायाधीश

नई विल्ली, 5 जुलाई, 1994

का.पा. 1670.—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्युमन भे. केन्द्रीय सरकार टेलीकाम मेहद्यूनगर के प्रबन्धान्त के संबंध नियोजकों और उनके कर्मकारों के बीच, शनूङधंघ में निदिल श्रीयोगिक विवाद में श्रीयोगिक अधिकरण, आनंद प्रदेश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-7-94 को प्राप्त हुआ था।

[संख्या एल/10012/212/91-आई.आर (टी.पू.)]

के.वी. वा. उम्री, ऐस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom, Mahaboobnagar and their workmen, which was received by the Central Government on 4-7-1994.

[No. L-40012/212/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-L.
Dated, 30th day of May, 1994

Industrial Dispute No. 43 of 1992

BETWEEN

G. Narasimhaiah, S/o Savaranna
about 25 years.Petitioner.

AND

1. The Sub-Divisional Officer,
Telecom, Gadwal-509125.
2. The Telecom District Engineer,
Mahboobnagar-509050.Respondents.

APPEARANCES :

M/s. C. Suryanarayana and P. Bhaskar Rao, Advocates
for the Petitioner.M/s. M. Panduranga Rao, M. V. Rama Rao, Advocates
for the Respondents.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/212/91-IR(DU), dated 25-6-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of Telecom, Mahboobnagar and their workmen to this Tribunal for adjudication :—

"Whether the action of the management of Sub-Divisional Office, Telecom, Gadwal, Sub-Division, Mahboobnagar in terminating the services of Shri G. Narasimhaiah, Casual Mazdoor w.e.f. 19-8-91 is justified ? If not, to what relief he is entitled to ?"

This reference was registered as Industrial Dispute No. 43 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows :—The petitioner was initially recruited and employed as Casual Mazdoor under the 1st Respondent w.e.f. 1-2-1984 continuously upto and inclusive of 15-3-1985 for a total of 242 days except during the last 14 days of April 1984 during May and June 1984 and also during the first 11 days of July, 1984 due to non-availability of work which is due to reasons beyond the Petitioner's control and hence his "absence" is not attributable to him. The petitioner was not employed for some days in August and September 1984, November 1984, January 1985, February 1985 due to non-availability of work and therefore it cannot be alleged that he was absent from work on those days. During the period from 1-6-1990 to 31-10-1990 the Petitioner was employed for 146 days for which he was paid his wages on ACG-17 vouchers. Subsequently he was not provided with work on the plea that there was no work. But while the conciliation proceedings were in progress, the petitioner was again terminated from service w.e.f. 10-8-1991. He therefore, made a complaint on 17-8-1991 to the Regional Labour Commissioner (Central), Hyderabad in reply to the said complaint against his retrenchment w.e.f. 10-8-1991 during pendency of conciliation proceedings, the SDO Telecom, Mahboobnagar filed his parawise comments dated 30-8-1991 addressed to the Regional Labour Commissioner (Central), Hyderabad and placed before the Conciliation Officer, Hyderabad on 13-9-1991. The petitioner however submits that in view of the definition of "continuous service" in Section 25-B of the I.D. Act and the fact that despite the break in his service, he was reinstated in service w.e.f. 1-4-1990 it is clear that there was no need for condonation of the break in his service. The petitioner submits that termination in terms of Section 2(oo) of the I.D. Act, 1947 and that it is illegal null void not only for non-compliance with the mandatory provisions of Section 33 of the said Act prohibiting the alteration of his service conditions by way of termination of his service during the pendency of the conciliation proceedings. The petitioner therefore prays that this Hon'ble Tribunal may be

pleased to declare accordingly and make an Award further declaring that the petitioner is entitled to reinstatement in service with full back wages from 19-8-1991 till the date of his reinstatement, protection of his seniority as per the provisions of Section 25-B of the I.D. Act, 1947 and for all other consequential and incidental benefits such as showing his name in the seniority list and regularisation in service in the Telecom Department according to his turn in the said seniority list of Casual Mazdoors of Mahboobnagar Telecom District and pending the same for grant of temporary status.

3. The brief facts of the counter filed by the Respondent read as follows :—The petitioner was engaged conditionally as no work no pay basis as per FHB Vo. III, Rules 153 and 154 as Casual Labour depending upon the availability of work and he was engaged by the Respondent for short spells of work purely on casual and temporary nature for laying cables, construction over head lines, maintenance of lines etc. The service of the casual labour is liable to be discontinued as and when these works are completed. The petitioner was engaged as casual labour on a specific understanding that his services are to be disengaged as soon as the works are over and that he is not entitled for any absorption or appointment. As the casual labour are engaged for work that of purely of casual nature, there can not be any permanent engagement or disengagement. Their engagement purely depends upon the availability of work. Even if a casual mazdoor is disengaged for want of work, it is always open to him to come and enquire for work and whenever it is available his services will again be engaged. He was engaged on casual basis in Gadwal Sub-Division for a period of 161 days only during 1984-85. The breaks during this period is due to non-availability of work. It is submitted that it is not known that the petitioner suffered any accident during March 1985. The petitioner was absent for a long time. The records of the relevant period does not show the engagement of the petitioner and that he was paid on ACG-17 vouchers also can not be confirmed. It is submitted that as the petitioner never requested/applied for condonation of break in service the question of Respondent taking any steps for condonation of break does not arise. He was only engaged afresh and he does not come under Section 25B of the I.D. Act and he is not in continuous service. It is submitted that the question of granting temporary status and regularisation irrelevant and beyond the scope of reference. It is therefore prayed that the Hon'ble Tribunal may be pleased to pass an award that the petitioner is not entitled to any relief.

4. The point for consideration is whether the action of the Respondent in terminating the services of Shri G. Narasimhaiah w.e.f. 19-8-91 is justified ?

5. W.W.1 was examined on behalf of the petitioner workman and marked Exs. W1 to W15. No oral or documentary evidence has been adduced on behalf of the Respondent-M.

6. W.W.1 is G. Narasimhaiah. In brief he deposed that he joined as casual mazdoor on 1-2-1984 at Gadwal Sub-Division. He worked upto 15-3-1985. Ex. W1 is the his working days particulars. He worked for 242 days upto that date. Thereafter on 15-3-1984 when he was working on the Telephone Pole due to induction of High Voltage current, he fell down and injured himself. Thereafter when he approached the Sub-Div. Officer he refused to give work stating they are not engaging casual mazdoors after 30-3-1985 but he assured him whenever the necessity arises he provided him work. Again on 1-4-1990 he was provided with work, on muster rolls. Ex. W5 is a letter dated 22-4-1991 due to break in service he could not be engaged. He prays this, Hon'ble Court that it may be pleased to reinstate him into service with back wages, continuity of service and other attendant benefits.

7. At the very outset, it is seen from the records that the Petitioner was engaged conditionally as no work no pay basis as per Rules 153 and 154. It is also seen that the petitioner was engaged by the Respondent for short spells of work purely on casual and temporary nature. It is also seen that the service of the casual labour is liable to be discontinued as and when these works are completed. When once the petitioner was engaged as casual labour on a specific understanding the petitioner can not claim or entitlement for any absorption or appointment. Since the casual labour are engaged for work that of purely of casual nature, he can not be made permanent. It is seen that the petitioner was engaged on casual basis in Gadwal Sub-Division for a period of 161 days only

during 1984-85. It is also seen that the records of the relevant period does not show the engagement of the petitioner and that he was paid on ACG-17 vouchers also is not confirmed. The petitioner was disengaged due to non-availability of work. Hence I find that the petitioner was never retrenched and the application of various provisions of the I.D. Act does not arise. So I find that the petitioner is not entitled to any relief of granting temporary status and regularisation and he is not entitled to reinstatement in service with full back wages from 9-8-1991.

8. In the result, the action of the Management of Sub-Divisional Office, Telecom, Gadwal, Sub-Division, Mahboobnagar, in terminating the services of Shri G. Narasimha, Casual mazdoor w.e.f. 19-8-1991 is justified. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for Petitioner/Workmen :

W.W.1 G. Narasimhaiah.

Witnesses Examined for Respondent/Management :

NIL

Documents marked for the Petitioner/Workmen :

Ex. W1—Working days particulars.

Ex. W2/13-12-90—Copy of the complaint given to the RLC(C) Hyderabad.

Ex. W3/4-4-91—Letter addressed by SDO Telecom, Gadwal to the Petitioner workman.

Ex. W4—Parawise remarks by the Management in response to Ex. W2.

Ex. W5/22-4-91—Lr. given the Department of Telecom to the petitioner Reg. Break in service.

Ex. W6—Regoinder filed by the workman to Ex. W4.

Ex. W7—Lr. from the 1st Respondent to the 2nd Respondent Reg. the days of Petitioner's engagement Xerox copy.

Ex. W8/6-8-91—Representation to the Telecom District Engineer, Mahboobnagar by the workman.

Ex. W9/17-8-91—Another complaint to the RLC by the counsel of the workman.

Ex. W10—Minutes of conciliation.

Ex. W11—Further parawise remarks.

Ex. W12/16-9-91—O.C. of Conciliation proceedings.

Ex. W13—Failure of Conciliation Proceedings.

Ex. W14—Representation made in pursuance to the CAT Order.

Ex. W15—Reply given by Telecom District Engineer.

नई दिल्ली, 5 जुलाई, 1994

का.पा. 1671.—ओडोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, फेल्डीय मरकार टेलीकाम वारंगल (ए.पी.) के प्रबंधन के मंबद्ध नियोजकों और उनके कर्मकारों के बीच, प्रान्तीय में निर्दिष्ट ओडोगिक विवाद में ओडोगिक प्रविकरण, प्रान्तीय प्रदेश के पंचपट को प्रकाशित करती है, जो केन्द्रीय मरकार को 4-7-94 को प्राप्त हुआ था।

[मंडपा एन-40012/16/91-प्राई.आर. (डी.यू.)]

के.वी.एवी. उम्मी, ईस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Telecom, Warangal (A.P.) and their workmen, which was received by the Central Government on 4-7-1994.

[No. L-40012/16/91-IR (DU)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I

Dated : 4th day of June, 1994.

INDUSTRIAL DISPUTE NO. 47 OF 1991.

BETWEEN :

Md. Hussain Ali, S/o Md. Afzal about 21 years, casual Mazdoor.

AND

The Sub-Divisional Officer, Phones, Warangal-506 007.
—RESPONDENT.

APPEARANCES :

M/s. C. Suryanarayana & P. Bhasker, Advocates for the Petitioner.

M/s. M. Panduranga Rao & B. G. Ravinder Reddy, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/16/91-IR (DU), dated 30-9-1991 referred the following dispute under Section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947 between the Management of M/s. Telecom, Warangal (A.P.) and their workman to this Tribunal for adjudication :

"Whether the action of the management of M/s. Telecom, Warangal (A.P.) represented by their Sub-Divisional Officer, in terminating the service of Sri Md. Hussain Ali without complying with the provisions of the Section 25-F of the Industrial Disputes Act, 1947 is justified ? If not, to what relief the workman concerned is entitled ?"

This reference was registered as Industrial Dispute No. 47 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the petitioner workman is read as follows :—The petitioner submitted that he was employed continuously from 17-1-1986 to 23-6-1987 except during May to July, 1986 due to cessation of work in the Respondent's jurisdiction on account of which the petitioner was deputed during August to October, 1986 to the Railway Electrification Project work undertaken by the Telecom Department. But thereafter he was again employed by the Respondent except in July, 1987 which was, either due to cessation or non availability of work to juniors like the petitioner. He was retrenched from service w.e.f. 24-06-1987 without notice and without payment of notice period wages as required under Section 25-F of the I.D. Act. Subsequent to the petitioner's retrenchment he was recalled to work in August, 1988 and employed for only 10 days in that month and for all the days in September, 1988. But he was discharged from service w.e.f. 1-10-1988 without complying with the mandatory provisions of the said Section 25-F. However in the months of February and March, 1989 the petitioner was employed again on M/Rs. for all the days but retrenched again i.e. for the 3rd time, this time also without complying with the said Section 25-F. Pursuant to the directions of the Supreme Court, the Telecom Department have

issued orders in their letter dated 17-11-1989 to grant temporary status to casual mazdoors who have rendered one year continuous service i.e. not less than 240 days service in that year, if they could not be absorbed in the regular establishment for want of vacancies. Thus it is clear that conferment of temporary status on casual mazdoors who have rendered one year continuous services, if they could not be absorbed in the regular establishment, is an incidence of one year continuous service in the department as Casual Mazdoor. The petitioner pray that this Hon'ble Tribunal may be pleased to hold and declare that this retrenchment is illegal and to direct the respondents to reinstate him in service with full back wages, confirmity of service and to absorb him in the Department according to his turn in the seniority list of casual mazdoors of Warangal Telecom District.

3. The brief facts of the counter filed by the Respondent Telecom read as follows : It is submitted that the reference itself is illegal for the reason that the services of the petitioner were never terminated as he was only working on casual basis and the casual mazdoors were offered work as and when the same is available. The Department engages casual mazdoors as and when temporary works are taken up for laying ground cables, construction of overhead alignments are taken up. As soon as the work is over, the employment of the casual mazdoor comes to an end likewise, if another work is taken up, and the casual mazdoor comes forward for employment, he will again be engaged till the work lasts. That in the case of casual mazdoors, work is not continuous and their engagement depends upon the availability of work. The petitioner was informed clearly at the time of his initial appointment as casual mazdoor that he was engaged for works of casual nature and as and when such casual works are completed, he will be disengaged from the muster rolls. The petitioner has also signed a declaration to this effect. That there is a procedure for recruitment of regular employees in the department and therefore, the claim of the petitioner that he should be made a permanent employee is not maintainable. Such disengagement will not amount to termination and such disengagement is automatic in the case of casual mazdoors. The contention of the petitioner that he is entitled for regularisation is not relevant for purpose of this case and the same is beyond the scope of reference made by the Government. It is therefore, prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the action of the Respondent in terminating the service of Shri Md. Hussain Ali without complying with the provisions of Section 25-F of the I. D. Act is justified ?

5. No oral or documentary evidence have been adduced by both the parties.

6. In this case, the petitioner workman claimed that he was recruited and continuously employed as Casual Mazdoor for the period from 17-1-1986 to 23-6-1987 except during May to July, 1986, that while in service he was retrenched thereafter from service on that ground that he was recruited 30-3-1985. On the other hand the contention of the Respondent that the petitioner was engaged as Casual Mazdoor on daily wages depending upon the availability of work. Further it is seen that none of the parties filed any documents. This Tribunal is left with no other alternative but to decide the case on the basis of claim statement and counter filed before this Tribunal. A reading of the claims and counter would indicate that the work of casual mazdoor is not continuous and purely depending upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. Here in this case the petitioner workman was engaged as a casual mazdoor on daily wage depending upon the availability of work. The work of the casual mazdoors comes to an end as and when the work is over. The allegation that the petitioner worked continuously during the period from 17-1-1986 to 23-6-1987. But as I mentioned earlier none of the parties have filed any documents to show that the petitioner workman has worked during the above relevant period. So when once the petitioner has not filed any documents to prove that he has worked for the said period, the question of making him entitle for reinstatement or giving protection does not arise. Nextly the allegation of the petitioner that he was terminated from service and that the termination is in violation of Section 25-F of the I. D. Act. I find there is no termination of service much less retrenchment

of service. The question of complying with the provisions of Section 25-F of the I. D. Act does not arise since the petitioner workmen was engaged as casual mazdoor on daily wages. They are engaged purely for discharging casual nature of work. It is further seen that the Respondent is a Government of India Department and it has got procedure for engaging regular employees. Hence I find that the petitioner workman is not entitled for absorption or for employment under the Respondent Telecom. It is also pertinent to note that the petitioner has also signed a declaration to the effect he will be engaged for works of casual nature and as and when the work completes he will be disengaged from the muster rolls. On a consideration of the facts and circumstances, I am of the clear view that the Respondent-workman is not entitled for reinstatement into service or any other benefits.

7. In the result, the action of the Management of M/s. Telecom, Warangal (A.P.) represented by their Sub-Divisional Officer, in terminating the service of Shri Md. Hussain Ali without complying with the provisions of the Section 25-F of the Industrial Disputes Act, 1947 is justified. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 4th day of June, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence.

NIL

नई दिल्ली, 5 जूनार्दि, 1994

का.आ. 1672—ओर्थोगिक विवाद प्रधिनियम, 1947 (1947 वा 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टैलीकॉम, माइक्रो यैच प्रोजेक्ट, हैदराबाद के प्रबन्धसंघ के संबद्ध नियाजकों और उनके कर्मकारों के बीच, अनुदान में विशिष्ट ओर्थोगिक विवाद में केन्द्रीय सरकार और्थोगिक अधिकरण, भारत प्रदेश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-7-94 को प्राप्त हुआ था।

[संख्या प.ल-40012/237/91-आई.आर. (डी.पू.)]
के.आ.आ. उमी, हस्क प्रधिकारी

New Delhi, the 5th July, 1994

S.O. 1672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom, Microwave Project, Hyderabad and their workmen, which was received by the Central Government on 4-7-94.

[No. L-40012/237/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkachalam, M.A., B.L., Industrial Tribunal-I.

Dated, 4th day of June, 1994

INDUSTRIAL DISPUTES NO. 65 OF 1992.

BETWEEN :

J. Balakrishna Raju, S/o Sri J.
Dasarath Raju, aged about 25 years,
Jamini Colony, Musheerabad,
Hyderabad.

.. Petitioner.

AND

1. The District Engineer, Microwave
Project, GOI Bagh Lingampalli,
Hyderabad .. Respondent

2. The General Manager,
Microwave Project,
Babukhan Estate, Basheerbagh,
Hyderabad. Respondent.

APPEARANCES :

Sri C. Subyanarayana and P. Bhaskar, Advocate for the Petitioner.
Sri P. Damodar Reddy, Addl. Central Govt. Standing Counsel for Respondents.

AWARD

The Government of India, Ministry of Labour by its Order No. L-40012/237/91-IR(DU), dt. 25-9-1992 referred the following dispute under Section 10(1) d(2A) of the Industrial Disputes Act, 1947 between the management of Telecom, Microwave Project, Hyderabad and their workmen to this Tribunal for adjudication:—

“Whether the action of the management of Sub-Divisional Office, Microwave Project, Hyderabad is justified in terminating the services of Sri J. Balakrishna Raju w.e.f. 1-3-88 ? If not, what relief he is entitled to ?”

This reference was registered as Industrial Dispute No. 65 of 1992 and notices were served on both the parties.

2. The brief facts of the claim statement filed by the petitioner read as follows.—The petitioner submits that he passed S.S.C. and Lower Grade Typewriting Examination in English. He has also acquired the ability to drive and obtained Heavy Motor Vehicle Driving Licence. He registered his name in the Employment Exchange at Hyderabad dt. 26-4-1984 for sponsoring his name for suitable employment. When he came to know that the 1st Respondent was making recruitment and or employing casual mazdoors to work in Microwave Project work of the Telecom Department, the petitioner office his services. The petitioner was employed on security duties at Microwave Station Godown, Hyderabad from 1-8-1986 to 28-2-1988 though no formal order was issued showing that he was recruited the petitioner. The petitioner submits that he was continuously employed without any interruption whatsoever during the period from 1-8-86 to 28-2-88 for a total of 577 days. As such at the time of termination of his services on and from 1-3-1988 the petitioner ought to have been given the termination notice in terms of Sec. 25-F of the I.D. Act and paid the compensation and other terminal benefits as per the mandatory provision therefore even though the petitioner's engagement was allegedly for short duration. Subsequent to the aforesaid judgement dt. 27-10-87 DOT issued orders dt. 20-6-88 withdrawing the powers vested in the Project Authorities etc. to recruit Casual labourers/workers. Following the order, the Department of Telecom have also issued the order dt. 17-10-88 on the subject of “regular absorption of casual labourers in Group 'D' posts”. This order was issued in supersession of the earlier orders on the subject “to streamline the regular absorption or retrenchment of casual labourers”. It was laid down that a combined seniority list of all Counsel labourers in respect of a recruitment unit will be maintained and it will include all casual labourers working within the territorial jurisdiction of the recruitment unit for various functional unit of Telecom Projects, Maintenance Regions, Electrifications and quality Assurance Circles etc. to which they are attached. It is clear that the Petitioner is entitled to regularisation of his service in Hyderabad Telecom District which is the recruitment unit which is required to depute casual mazdoors/workers to the Projects and other units in Hyderabad and R. R. Districts over which Hyderabad Telecom District has territorial jurisdiction. The petitioner prays that the Award be made accordingly awarding at the same time, exemplary costs to the Petitioner as the Respondent have illegally retrenched him from service in gross violation of the provision of the I.D. Act.

3. The brief facts of the counter filed by the Respondent Telecom read as follows.—No recruitment was made by this office. The labourer was engaged for a short duration on contract basis. The verification of certificates and employment registration card was done by this office. The labourer was engaged orally on day to day basis. No order was issued

even while engaging him. A notice was displayed in the godown where he was working duly indicating that he would be discharged w.e.f. 1-3-1988. In this Department, there is no practice of giving any appointment order, discharge memo or notice in writing to the daily rated casual labourers as they are not borne on any regular establishment and are engaged on day to day basis. The stores were removed, hence the petitioner was discharged. The petitioner was engaged for security of stores at Microwave godown, Hyderabad from 1-8-1986 to 28-2-1988, he was taken purely on temporary basis as such no appointment order was issued while engaging him for performing duties for short duration. Since the stores kept in the godown were removed, the said petitioner casual mazdoor was disengaged since then. The orders contained in letter dt. 30-3-1985 from Director General, P&TE clearly instructed all the officials of the Department not to do fresh recruitment and employment of casual labour and that the efforts should be made to reduce the number of casual mazdoors employed. It is prayed that the Hon'ble Tribunal may be pleased to pass an award holding that there are no merits in the claim of the petitioner and that he is not entitled to any relief.

4. The point for adjudication is whether the action of the Respondent is justified in terminating the services of Sri J. Balakrishna Raju w.e.f. 1-3-1988 ?

5. No oral or documentary evidence has been adduced by both the parties.

6. In this case the petitioner was engaged for a short duration of contract basis. He was engaged orally on day to day basis that no order was issued even while engaging him. There was no practice of giving any appointed casual labourers as they are not borne on any regular establishment. The petitioner was engaged for security of stores at Microwave godown, Hyderabad from 1-8-1986 to 28-2-1988. Since the project works are not of continuous nature, the petitioner was engaged only for a specific period i.e. from 1-8-1986 to 28-2-1988. There is a categorical orders No. 270/6/84-STN, dt. 30-3-1985 clearly instructed all the officials of the Department not to take fresh recruits and employment of Casual labour. I see, there is no violation of Industrial Disputes Act. On a consideration of the facts and circumstances I find there is no merits in the claim of the petitioner and that he is not liable to be entitled for reinstatement.

7. In the result, the action of the Management of Sub-Division Office, Microwave Project, Hyderabad is justified in terminating the services of Sri J. Balakrishna Raju w.e.f. 1-3-1988 and that the concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 4th day of June, 1994.

Appendix of Evidence : NIL

Y. VENKATACHALAM, Industrial Tribunal-I

नई दिल्ली, 5 जुलाई, 1994

का.आ. 1673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार एस.डी.ओ. टैलीकार्म, महाबन्ध के प्रबंधतात्रे के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, अन्ध्र प्रदेश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-7-94 को प्राप्त हुआ था।

[संख्या प्र० 0012/139/91-आई आर (डी.यू.)]

के.वी.वी.उम्री, डैस्ट्रिक्ट अधिकारी

New Delhi, the 5th July, 1994

S.O. 1673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.D.O. Telecom, Mahaboobnagar and their workmen, which was received by the Central Government on 4-7-94.

[No L-40012/139/91-IR(DU)]
K. V. B. UNNY, Desk Officer

BEFORE THE INDUSTRIAL TRIBUNAL
AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 30th May, 1994

INDUSTRIAL DISPUTE NO. 13 OF 1992

BETWEEN :

M. Obulesu Slo Naganna,
aged about 22 years, Casual Mazdoor, ... Petitioner

AND

1. The Sub-Divisional Officer, Telecom Mahaboobnagar-509 050.
2. The Telecom District Engineer, Mahaboobnagar. . . . Respondents

APPEARANCES :

S|Sri C. Suryanarayana & P. Bhaskar, Advocates for the Petitioner.

S|Sri M. Panduranga Rao, B. G. Ravinder Reddy and N. V. Rama Rao, Advocates for the Respondents.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/139/91-IR(DU), dt. 3-3-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of S.D.O., Telecom, Mohaboobnagar and their workman to this Tribunal for adjudication :

"Whether the management of Sub-Divisional Office (Rural) Telecom, Mahaboobnagar is justified in terminating the service of Sri M. Obulesu, Ex-Telecom Mazdoor w.e.f. 9-11-1989. If not, what relief he is entitled to ?"

This reference was registered as Industrial Dispute No. 13 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner workman read as follows.—The petitioner's claim for reinstatement in service is based on the fact that 1st Respondent recruited and employed the petitioner continuously for a total period of 270 days from 1-1-1989 to 8-11-1989. During this period there were short breaks of 3 days in January 1989, 23 days in May 1989/1 day in June 1989, 9 days in July 1989, 1 day in August 1989 and 6 days in October 1989 but in view of the provisions of Section 25-F of the Act, those breaks are liable to be treated as part of his 'service' for all purposes except wages as these breaks were on account of cessation of work which is not due to any fault on the part of the petitioner. But the petitioner was retrenched from service w.e.f. 9-11-1989 on the ground that he was recruited after 30-3-1985 contrary to the orders of D. G., P&T New Delhi prohibiting any fresh recruitment and employment of casual mazdoors. The petitioner was not given notice nor paid wages as per the mandatory provisions of Section 25-F of the I.D. Act. The petitioner submits that after absorbing several mazdoors the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus clear that continuous one year service as casual labourers in the Telecom Department entitles them to temporary

status pending their absorption in the regular establishment of the Department according to their turn in the seniority list of casual mazdoors as a recruitment unit and for preparing the seniority list the Director General issued separate orders. The petitioner prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment is illegal and to direct the Respondent to reinstate him in service with full back wages, continuity of service, protection of his seniority and all other benefits.

3. The brief facts of the counter filed by the Respondent read as follows :—

The petitioner was engaged as a casual mazdoor on daily wages depending upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. The work of the Casual Mazdoor comes to an end as and when the work is over. The work of the casual mazdoor is not continuous and purely depends upon the availability of work. The allegation that the petitioner worked for 270 days during the period from 1-1-1989 to 8th November, 1989 is not correct. He worked for 157 days during the said period of 1-1-1989 to 8th November 1989. It is submitted that in cases of casual mazdoors, there is no question of termination. Casual mazdoors will be discontinued as and when the work is over. Therefore the allegation that the petitioner was terminated from service and that the termination is in violation of Section 25-F of the I.D. Act is not correct. Section 25-F of the I.D. Act is not applicable to the facts of this case and the question of complying with Section 25-F does not arise. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The casual mazdoors are meant purely for discharging casual nature of work and they have no right of whatsoever nature to seek for absorption or for employment under the Respondent. The various judgement cited by the petitioner in the claim statement are not relevant and are not applicable to the facts of this case. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-1985. It is therefore prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the Respondent is justified in terminating the services of Sri M. Obulesu, Ex-Telecom Mazdoor w.e.f. 9-11-1989 ?

5. W.W1 is examined on behalf of the Petitioner and marked Exs. W1 to W9. No oral or documentary evidence has been adduced by the Respondent-Telecom.

6. W.W1 is M. Obulesu. In brief he deposed that he joined the Department on 1-1-1989 as casual mazdoors. He used to work to cable digging erection of poles etc. He belongs to Mala caste which is a scheduled caste. Ex. W2 is the xerox copy of the order dt. 13-1-1981 where it was envisaged that the reservations should be followed for regularisation of casual mazdoors. He worked for 270 days in the Department as casual mazdoor. He worked in the Department till 9-11-1989. Thereafter he was removed from the work. No reasons were given for termination. No notice was given to him, nor wages were paid in lieu of notice. Juniors to me are still working in the department though he is not aware of their names. Therefore he prays this Hon'ble Tribunal to reinstate him into service with back wages and all other attendant benefits.

7. At the very outset, it is seen that Casual mazdoors are engaged for temporary works of trenching, digging cable laying etc. and that this work is not continuous and permanent. The petitioner in question engaged as Casual mazdoor on daily wage depending upon the availability of work. The petitioner was engaged as and when the work was available. It is seen that the case of casual mazdoors there is no question of termination. The allegation that the petitioner was terminated from service and that the termination is in violation of Section 25-F of the I.D. Act is not correct. It is seen that the petitioner was engaged by the Respondent for short spells of work purely on casual and

temporary nature. It is also seen that the service of the casual labour is liable to be discontinued as and when these works are completed. When once the petitioner was engaged as casual labour on specific understanding, the petitioner cannot claim for entitlement for any absorption or appointment. Since the casual labour are engaged for work that or purely of casual nature, he cannot be made permanent. It is seen that the petitioner was engaged on casual basis for a period of 157 days only during 1-1-1989 to 8-11-1989. The petitioner was disengaged due to non-availability of work. Hence I find that the petitioner was never retrenched and the application of various provisions of the I.D. Act does not arise. So I find that the petitioner is not entitled to any relief of granting temporary status and regularisation and he is not entitled to reinstatement in service with full back wages from 8-11-1989.

8. In the result, the management of Sub-Divisional Office (Rural) Telecom, Mahaboobnagar is justified in terminating the services of Sri M. Obulesu, Ex-Telecom, Mazdoor with effect from 9-11-1989. The petitioner-workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for the workmen :

Witnesses Examined for the Management :

W.W1.—M. Obulesu
NIL

Documents marked for the Petitioner/Workman :

Ex. W1 27-7-89.—Xerox copy of the Caste Certificate.
Ex. W2 13-1-81.—Xerox copy of the Order No. 269/27-92-STN, dt. 3-6-92.
Ex. W3.—Xerox copy of the working days particulars.
Ex. W4 -7-91.—Xerox copy of the representation given to T.D.E., Mahaboobnagar.
Ex. W5.—Complaint made to the Regional Labour Commissioner xerox copy.
Ex. W6.—Parawise remarks submitted by the Management to Ex. W5.
Ex. W7.—Rejoinder filed by the workman to Ex. W6.
Ex. M8.—Xerox copy of minutes of conciliation.
Ex. W9.—Conciliation failure report xerox copy.

नई दिल्ली, 5 जून 1994

का.आ. 1674--अंतर्राष्ट्रीय विकास प्रधिनियम, 1947 (1947 का 14) नीं धारा 17 के अन्तर्गत में को-कोरिय सरकार एम.एस. ईमेंटर नगर बुर्गल (ए.पी.) के प्रबंधन के संबद्ध नियोजकों और उनके कानूनों के बीच, अनुंदित में निर्दिष्ट अंतर्राष्ट्रीय विकास में अंतर्राष्ट्रीय प्रधिकरण, आनंद प्रदेश के प्रबंधन को प्रवासित करनी है, जो को-कोरिय सरकार को 4-7-94 की प्राप्ति हुया था।

[राजा ए.ए. 40012/26/91-गाइ आर (डी.यू.)]

के.वी.नी. उमी, डप्ट अधिकारी

New Delhi, the 5th July, 1994

S.O. 1674.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Andhra Pradesh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Telecom Nagar Kurnool (AP) and their workmen, which was received by the Central Government on 4-7-94.

[No. L-40012/26/91-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 4th day of June, 1994

INDUSTRIAL DISPUTE NO. 48 OF 1991

BETWEEN

B. Pandu S/o B. Balaiah,
about 20 years Casual Mazdoor .. Petitioner

AND

1. The Sub-Divisional Officer,
Telecom, Nagarkurnool-509 209.
2. The (Telecom) District Engineer,
Mahaboobnagar-509 050. .. Respondents

Appearances :

M/s. C. Suryanarayana and P. Bhasker, Advocates for the Petitioner.

M/s. M. Panduranga Rao, B. G. Ravinder Reddy, and M. V. Rama Rao, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/26/91-IR(DU), dt. 30-9-1991 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of M/s. Telecom, Nagar Kurnool (AP) to this Tribunal for adjudication :

"Whether the action of the management of Telecom Department, Mahaboobnagar for not allowing Sri B. Pandu, Ex-Casual Labour on duty with effect from 1-1-1989 is justified ? If not, to what relief the workman is entitled ?"

This reference was registered as Industrial Dispute No. 48 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows :—The Petitioner's claim for reinstatement in service is based on the facts that after verifying his date of birth and educational qualifications as well as his Employment Registration Card, the 1st Respondent recruited and employed the petitioner as Casual Mazdoor for 338 days during the period from 1-1-1988 to 31-12-1988 but retrenched thereafter on the ground that he was recruited after 30-3-1985 contrary to the orders of the Director General New Delhi prohibiting any fresh recruitment and employment of Casual Mazdoors. Notwithstanding the aforesaid direction of the Supreme Court, the petitioner was retrenched from service w.e.f. 1-1-1989 without complying with the provisions of Section 25-F of the I. D. Act on the fallacious ground that he was recruited after 30-3-1985 the date on which imposed ban on fresh recruitment/employment of Casual Mazdoors. The petitioner submits that after absorbing several Mazdoors, the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus an incidence of continuous one year service as Casual Labourers in the Telecom Department to be conferred with temporary status pending their absorption in the regular establishment of the Department which takes place according to their turn in the seniority list of casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders. The petitioner says that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment w.e.f. 1-1-1989 is illegal, to direct the Respondent to reinstate him in service with full back wages, continuity of service.

3. The brief facts of the counter filed by the Respondent read as follows :—It is submitted that the petitioner was engaged as a Casual Mazdoor on daily wages depending

upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. The work of the Casual Mazdoors comes to an end as and when the work is over. The work of the Casual Mazdoor is not continuous and purely depends upon the availability of work. The allegation that the petitioner worked continuously for 338 days during the period from 1-1-1988 to 31-12-1988 is not correct. It is submitted that in case of casual mazdoors, there is no question of termination. The allegation that the petitioner was terminated from service and that the termination is in violation of Section 25-F of the I. D. Act is not correct, Section 25-F of the I. D. Act is not applicable to the facts and circumstances of this case and the question of complying with the provisions of Section 25-D of the Act does not arise. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The casual mazdoors are meant purely for discharging casual nature of work and they have not got any right of whatsoever nature to seek for absorption or for employment under the Respondent. The various judgements cited by the petitioner in the claim statement are not relevant and are not applicable to the facts of this case. The fact that the petitioner is unable to give the date of retrenchment itself shows that there is no retrenchment. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-1985. It is prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the action of the Respondent for not allowing Sri B. Pandu. on duty w.e.f. 1-1-1989 is justified ?

5. W.W1 was examined on behalf of the Petitioner-workman and marked Exs. W1 to W4 on its side. M.W1 was examined on behalf of the Respondent and no documents were marked on its side.

6. W.W1 is B. Pandu. He deposed that he was engaged by the Department on 1-1-1988. He worked upto 31-12-88. Later he was retrenched by the Respondent. At the time of retrenchment no notice was issued to him and no reasons were assigned to him nor he was paid any one month's wages. For one year he approached the Respondent and requested him to reinstate in their employment. He prays this Hon'ble Tribunal to reinstate him together with all attendant benefits. Ex. W2 is the xerox copy of the D.G's order dt. 7-11-1989.

7. M.W1 is S. M. Vali. He deposed that he is working under the 2nd Respondent from August 1993. He was giving evidence on the basis of records. The petitioner was engaged from January 1988 to December 1988 but during this period he was not engaged continuously and there are breaks in the service. The petitioner was engaged for digging of trenches, erection of poles, laying cables. This is not a regular work under the Respondent. The petitioner was engaged purely on temporary basis on this work. The petitioner was informed before his employment, that he is being engaged for temporary work and as soon as the work is completed his employment would automatically comes to an end and accordingly the petitioner was disengaged after December 1988. No junior to the petitioner is continued after December, 1988. As per the policy of the Telecom Department, how this temporary works are given on contract basis from June 1989 onwards, and as such there is no work to engage the petitioners.

8. In this case the petitioner workman was engaged as Casual mazdoor on daily wages depending upon the availability of work. It is seen that the casual mazdoors are engaged for laying the cables, erecting poles etc. It is also seen that the work of Casual mazdoors comes to an end as and when the work is over, and that the work of the casual mazdoors is not continuous and purely depends upon the availability of work. Section 25-F of the I. D. Act is not violated as the petitioner was terminated from service. The Respondent Telecom is a Government of India Department and it has got its own procedure for engaging regular employees. The petitioner workman cannot be absorbed or taken into employment as he was purely discharging casual nature of work. The various judgements cited by the Petitioner in their claim statement are not relevant to the facts of the present case. The allegation of the Respondent that the petitioner is unable to give his date of retrenchment itself

shows that there is no retrenchment. Hence I find that the petitioner workman was engaged as casual mazdoor purely for temporary work. It is pertinent to note that the petitioner was informed before his employment that he is being engaged for temporary work and as soon as the work is completed, his employment would automatically comes to an end and thus accordingly the petitioner was disengaged after December 1988. On a consideration of the facts and circumstances of the case, I am of the clear view that the Petitioner-workman is not liable to be reinstated into service and he cannot be absorbed in the regular establishment.

9. In the result, he action of the Management of Telecom Department, Mahboobnagar for not allowing Sri B. Pandu, Ex-Casual Labour on duty with effect from 1-1-1989 is justified. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 4th day of June, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence.

Witnesses Examined for Petitioner :

W.W1 B. Pandu

Witnesses Examined for Respondent :

M.W1 S. M. Vali

Documents marked for the Petitioner/Workman :

Ex. W1—Xerox copy of working days particulars.

Ex. W2—7-11-89—Xerox copy of D.G's Order.

Ex. W3—26-9-90—Complaint given to teh R. L. C. (G) Hyderabad (Xerox copy) Reg. Illegal retrenchment from service.

Ex. W4—29-1-91—Xerox copy of conciliation failure report.

Documents marked for the Respondent.

NIL

Y. VENKATACHALAM, Industrial Tribunal-I

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.
Dated : 4th day of June, 1994

INDUSTRIAL DISPUTE NO. 48 OF 1991

BETWEEN

B. Pandu S/o B. Balaiah,
about 20 years Casual Mazdoor . Petitioner

AND

1. The Sub-Divisional Officer,
Telecom, Nagarkurnool-509 209.
2. The (Telecom) District Engineer,
Mahboobnagar-509 050 . Respondents

Appearances :

M/s. C. Survanarayana and P. Bhesker, Advocates for the Petitioner.

M/s. M. Panduranga Rao, B. G. Ravinder Reddy, and M. V. Rama Rao, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/26/91-IR(DU), dt. 30-9-1991 referred

the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of M/s. Telecom, Nagar Kurnool (AP) to this Tribunal for adjudication :

"Whether the action of the management of Telecom Department, Mahboobnagar for not allowing Sri B. Pandu, Ex-Casual Labour on duty with effect from 1-1-1989 is justified ? If not, to what relief the workman is entitled ?"

This reference was registered as Industrial Dispute No. 48 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows :—The Petitioner's claim for reinstatement in service is based on the facts that after verifying his date of birth and educational qualifications as well as his Employment Registration Card, the 1st Respondent recruited and employed the petitioner as Casual Mazdoor for 338 days during the period from 1-1-1988 to 31-12-1988 but retrenched thereafter on the ground that he was recruited after 30-3-1985 contrary to the orders of the Director General New Delhi prohibiting any fresh recruitment and employment of Casual Mazdoors. Notwithstanding the aforesaid direction of the Supreme Court, the petitioner was retrenched from service w.e.f. 1-1-1989 without complying with the provisions of Section 25-F of the I.D. Act on the fallacious ground that he was recruited after 30-3-1985 the date on which imposed ban on fresh recruitment/employment of Casual Mazdoors. The petitioner submits that after absorbing several Mazdoors; the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus an incidence of continuous one year service as Casual Labourers in the Telecom Department to be conferred with temporary status pending their absorption in the regular establishment of the Department which takes place according to their turn in the seniority list of casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders. The petitioner prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment w.e.f. 1-1-1989 is illegal, to direct the Respondent to reinstate him in service with full back wages, continuity of service.

3. The brief facts of the counter filed by the Respondent read as follows :—It is submitted that the petitioner was engaged as a Casual mazdoor on daily wages depending upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. The work of the Casual Mazdoors comes to an end as and when the work is over. The work of the Casual Mazdoor is not continuous and purely depends upon the availability of work. The allegation that the petitioner worked continuously for 338 days during the period from 1-1-1988 to 31-12-1988 is not correct. It is submitted that in case of casual mazdoors, there is no question of termination. The allegation that the petitioner was terminated from service and that the termination is in violation of Section 25-F of the I.D. Act is not correct. Section 25-F of the I. D. Act is not applicable to the facts and circumstances of this case and the question of complying with the provisions of Section 25-D of the Act does not arise. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The casual mazdoors are meant purely for discharging casual nature of work and they have not got any right of whatsoever nature to seek for absorption or for employment under the Respondent. The various judgements cited by the petitioner in the claim statement are not relevant and are not applicable to the facts of this case. The fact that the petitioner is unable to give the date of retrenchment itself shows that there is no retrenchment. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-1985. It is prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the action of the Respondent for not allowing Sri B. Pandu, on duty w.e.f. 1-1-1989 is justified ?

5. W.W1 was examined on behalf of the Petitioner-workman and marked Exs. W1 to W4 on its side. M.W1 was examined on behalf of the Respondent and no documents were marked on its side.

6. W.W1 is B. Pandu. He deposed that he was engaged by the Department on 1-1-1988. He worked upto 31-12-1988. Later he was retrenched by the Respondent. At the time of retrenchment no notice was issued to him and no reasons were assigned to him nor he was paid any one month's wages. For one year he approached the Respondent and requested him to reinstate in their employment. He prays this Hon'ble Tribunal to reinstate him together with all attendant benefits. Ex. W2 is the xerox copy of the D.G's order dt. 7-11-1989.

7. M.W1 is S. M. Vali. He deposed that he is working under the 2nd Respondent from August 1993. He was giving evidence on the basis of records. The petitioner was engaged from January 1988 to December 1988 but during this period he was not engaged continuously and there are breaks in the service. The petitioner was engaged for digging of trenches, erection of poles, laying cables. This is not a regular work under the Respondent. The petitioner was engaged purely on temporary basis on this work. The petitioner was informed before his employment, that he is being engaged for temporary work and as soon as the work is completed his employment would automatically come to an end and accordingly the petitioner was disengaged after December 1988. No junior to the petitioner is continued after December, 1988. As per the policy of the Telecom Department, now this temporary works are given on contract basis from June 1989 onwards, and as such there is no work to engage the petitioners.

7. In this case the petitioner workman was engaged as Casual mazdoor on daily wages depending upon the availability of work. It is seen that the casual mazdoors are engaged for laying the cables, erecting poles etc. It is also seen that the work of Casual mazdoors comes to an end as and when the work is over, and that the work of the casual mazdoors is not continuous and purely depends upon the availability of work. Section 25-F of the I. D. Act is not violated as the petitioner was terminated from service. The Respondent Telecom is a Government of India Department and it has got its own procedure for engaging regular employees. The petitioner workman cannot be absorbed or taken into employment as he was purely discharging casual nature of work. The various judgements cited by the Petitioner in their claim statement are not relevant to the facts of the present case. The allegation of the Respondent that the petitioner is unable to give his date of retrenchment itself shows that there is no retrenchment. Hence I find that the petitioner workman was engaged as casual mazdoor purely for temporary work. It is pertinent to note that the petitioner was informed before his employment that he is being engaged for temporary work and as soon as the work is completed, his employment would automatically come to an end and thus accordingly the petitioner was disengaged after December 1988. On a consideration of the facts and circumstances of the case, I am of the clear view that the Petitioner-workman is not liable to be reinstated into service and he cannot be absorbed in the regular establishment.

8. In the result, the action of the Management of Telecom Department, Mahboobnagar for not allowing Sri B. Pandu, Ex-Casual Labour on duty with effect from 1-1-1989 is justified. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 4th day of June, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined
for Petitioner :

W.W1 B. Pandu

Witnesses Examined
for Respondent :

M.W1 S. M. Vali

Documents marked for the Petitioner/Workman :

Ex. W1—Xerox Copy of working days particulars.

Ex. W2 7-11-89—Xerox copy of D.G's Order.

Ex. W3 26-9-90—Complaint given to the R.L.C. (C) Hyderabad (Xerox copy) Reg. Illegal retrenchment from service.

Ex. W4 29-1-91—Xerox copy of conciliation failure report.

Documents marked for the Respondent :

NIL

नई दिल्ली, 6 जुलाई, 1994

का.आ. 1675.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन पोस्ट एन्ड टेलीग्राफ डिपार्टमेंट के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारण, वन्दे देश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-94 को प्राप्त हुआ था।

[संख्या एल-40012/275/91-आई.आर. (डी.यू.)]
के.वी.बी. उम्री, डेस्क अधिकारी

New Delhi, the 6th July, 1994

S.O. 1675.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Vadodara as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Post and Telegraph Department, Dak Bhavan and their workmen, which was received by the Central Government on 6th July, 1994.

[No. L-40012/275/91-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI A. B. MARATHE, INDUSTRIAL TRIBUNAL, VADODARA

Reference (IT V) No. 1 of 93

Secretary,

Indian Posts & Telegraphs Department.

Dak Bhavan,

New Delhi-110001 and others. ..First Party.

V/s.

Ayubkhan Ahmadkhan Sindhi,

A workman employed by Party No. 1,

At & Post Mota Habipura,

Via : Sathed-391111,

Dist. Vadodara.

...Second Party.

AWARD

Ministry of Labour, Government of India by order dated L-40012/275/91-IR(DU) dated 17th January, 1993 was pleased to refer the following dispute for adjudication to this Tribunal :—

“Whether the action of the Department of Posts, Baroda through Sub-Divisional Inspector (P) Dabhoi, in terminating the services of Shri A. A. Sindhi, EDA workman, w.e.f. 15th January, 1991 is justified? If not, to what relief he is entitled to?”

The workman filed the statement of claim at Ex. 2 on 29th May, 1993 through his advocate. The postal department filed the written statement on 30th March, 1994. On the same day they gave application Ex. 9 for dismissing the reference on the ground that the workman was not attending the Court. That application was kept for hearing. On the next date i.e. on 15th June, 1994 Shri G. P. Solanki, Assistant Superintendent, Post Offices, Eastern Sub-Division was present on behalf of the first party. But neither the workman nor his learned advocate was present. What I find from the Roanama is that from the date of filing the statement of claim neither the workman nor his advocate has attended the Court. Therefore, it appears the workman is not interested in pursuing this matter. Hence the following order is passed :—

ORDER

The reference is dismissed for want of evidence.
Dated : 21-6-1994.

A. B. MARATHE, Industrial Tribunal (Central)
1643 GI/94-5

नई दिल्ली, 6 जुलाई, 1994

का.आ. 1676.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन पोस्ट के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारण, वन्दे देश के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-94 को प्राप्त हुआ था।

[संख्या एल-40011/15/92-आई.आर. (डी.यू.)]

के.वी.बी. उम्री, डेस्क अधिकारी

New Delhi, the 6th July, 1994

S.O. 1676.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Department of Post and their workmen, which was received by the Central Government on 6-7-1994.

[No. L-40011/15/92-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, BOMBAY
PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer
Reference No. CGIT-76 of 1993

Parties :

Employers in relation to the management of
Dept. of Post.

AND

Their Workmen

APPEARANCES :

For the Management : No appearance.

For the workmen : Shri B. G. Tamhankar.

INDUSTRY : Post & Telegraph

STATE : Maharashtra

Bombay, dated the 16th day of June, 1994

AWARD

By letter dated 20-10-1993, Government of India, Ministry of Labour has under section 10(1) (d) read with section 2A of the Industrial Disputes Act, 1947, made following reference for adjudication to this Tribunal.

“Whether the action of the Deptt. of Post, Bombay in ordering punishment of withholding of 3 successive increments to S/Sh.

- (1) M. T. Katti, (2) J. M. Naiknavare, (3) C. R. Walve, (4) S. N. Kumbhar, (5) P. K. Bangar, (6) N. B. Suratwala, (7) P. D. Hadkar, (8) S. S. Bilare (9) M. R. Birmole and (10) J. B. Thambe-w.e.f. the

date of increment due to them cumulative from 1989 is just, legal and proper? If not, to what relief these workmen are entitled to?"

2. On behalf of the 10 workmen, statement of claim has been filed by Shri B. G. Tamhankar, Circle Secretary, AIPEU CL. III & EDS Maharashtra Circle

3. The 10 employees in respect of whom action has been taken by the management and which action is being challenged by the union were at the relevant time working as Postal Assistants in Bombay City South Division, Bombay and were working in Yogakshema Directional Sorting Office. On 23-3-1989 at about 6.00 hours, so says the union, the Sub Postmaster, Yogakshema P. O. issued order in pursuance of instructions from Director Postal Services Bombay calling the aforesaid Postal Assistants to perform usual duties on 24-3-1989 and 26-3-1989 though the days were common holiday and weekly off day for postal employees.

4. According to the union there is vast difference in the working of the Post Offices and Railway Mail Services Offices, which work round the clock and if the officials in Railway Mail Service have to work on holidays or weekly off days, they are entitled to Over Time and Off for such duties. Besides their weekly off is also not common. On the contrary as per existing rules of the Department, Sunday is the weekly off day for the Post Office Staff and the postal holidays are closed holidays for them. If the postal staff is directed to perform duty on holidays they are entitled to Over Time Allowance.

5. The 10 workmen are not directly under the control of the Director Postal Services and as such all orders and instructions from the higher authorities should have to be received through the Sr. Superintendent of Post Offices, Bombay City South Division under whose administrative control the Yogakshema P. O. is and where these workmen were working. The Sub-Postmaster Yogakshema P. O. has noted the instructions received from the Director Postal Services in his order book and brought the same to the notice of the workmen on 23-3-1989. As there was nothing stated regarding compensation to be paid for such performance of duty on Sunday and closed holiday the workmen refused to note the same. On 23-3-1989 all the work in the Yogakshema P. O. was completed by the staff present on the day. On 24-3-1989 (which was a closed holiday) no work was received in that office. On 25-3-1989, the Sub Postmaster Yogakshema P. O. has not made any enquiry with aforesaid workmen as to their non-attendance on the contrary he has not issued any modified order for their attendance on 26-3-1989, but considering non-receipt of any work, told them not to attend on 26-3-1989 verbally.

6. On 3rd April, 1989, the Sr. Superintendent of Post Offices Bombay City South Division has enquired in writing from these workmen for their non-attendance on 24-3-1989 and 26-3-1989. The workmen have inter alia replied that in pursuance of orders from the Director Postal Services. The Sub Postmaster Yogakshema P. O. has issued orders at about 6.00 hours on 23-3-1989 for their attendance on 24-3-89

and 26-3-1989, which were closed holiday and Sunday, which is weekly off day. On the above days they were asked to perform duty as usual, but there was no mention of compensation in terms of OTA for duty performed in the aforesaid order. Besides, they are entitled to avail of effective holidays and weekly off day. If there would have been mention of any compensation in terms of OTA in the aforesaid orders they would have performed duties on those days, namely, 24-3-1989 and 26-3-1989. On 24-4-1989, the Sr. Superintendent of Post Office, Bombay City South Division has served a memorandum under Rule No. 16 of CCS (CCA) Rules 1965 and it was imputed therein that they have refused to work on over time duty on the aforesaid days. In reply to the aforesaid memorandum, the workmen have requested for 10 days extension for replying the aforesaid memorandum vide their letter dated 5-5-1989. But that was refused and further direction was given to submit written statement of defence before 12-5-1989 failing which decision will be taken ex parte. The Sr. Supdt. of Post Offices, Bombay City South Division was pointed out that the memorandum dated 24-4-1989 was not bearing the signature of issuing authority, namely Sr. Supdt. of Post Offices, Bombay City South Division and therefore inoperative and void. On 15-5-1989, the Sr. Supdt. of Post Offices again issued back dated same memorandum calling for written statement of defence within 10 days from the receipt of the same.

7. Shri Katti has made grievance about the denial of natural justice on account of refusal to grant extension for submitting the written statement of defence and also denied the charges framed wherein it was stated that there was refusal for carrying out orders to perform overtime duty on 24-3-1989 and 26-3-89 as there was no mention of the same in the orders stated in the Sub Postmaster's order book. Addendum was issued on 12-6-1989, charging the aforesaid workmen for participation in strike and Sr. Supdt. of Post Offices called for their written statement of defence on this count also. On 29-7-1989, the aforesaid workmen submitted their written statement of defence, denying the charges. However, on 11-8-1989 by the Sr. Supdt. of Post Offices stated that the defence was not acceptable and awarded penalty of withholding three successive increments without cumulative effects beginning from the next increment when it falls due. An appeal preferred against this order was rejected. It is contended that the original order given on 23-3-1989 through Sub Postmaster, Yogakshema P. O. was by Shri C. S. Pandhani, Director Postal Services Bombay, who happened to be the Appellate Authority in this case and had every reason for bias in the case. Union has approached the Regional Commissioner Labour for intervention and in spite of meeting fixed there was no favourable response and therefore, this dispute came to be referred to this Tribunal.

8. Prayer is to set aside the orders of penalty and give such relief as is just. No written statement has been filed on behalf of the management in spite of the fact that the notice of this has been served on the Chief Postmaster General, not once but twice. On the day fixed for hearing I heard, therefore, Shri Tamhankar who appeared on behalf of the union as

there was no representative on behalf of the management though on an earlier occasion that is on 8-3-1994, management's representative was present and prayed for time for filing written statement.

9. The point that arises for consideration is whether the action of the Department of posts in ordering the punishment is just, legal and proper.

10. In the first instance it is not disputed that on 23-3-1989, an order of circular directing amongst others, 10 aggrieved employees to attend office and perform normal duties on 24-3-1989 and 26-3-1989, 24-3-1989 being a holiday and 26-3-1989 a weekly off day for postal employees. It is further admitted that the employees refused to acknowledge the intimation. It is stated in the para 8 of the statement of claim that it was done because there was nothing stated regarding compensation to be paid for such performance of duties on Sunday and closed holiday. It is an admitted position that on 24-3-1989, none of these employees had attended much less performed any duties. On 25-3-1989 however, it appears that attendance is there but case is that the Sub-Postmaster did not make any enquiry about their non-attendance on 24-3-1989. It is further, their case that about their non attendance on 26-3-1989 that Sub Postmaster told them verbally not to attend on 26-3-1989. On the point that he told them verbally not to attend there is no material.

11. It is the case of the union that on 3-4-1989, the Sr. Supdt. of Post Offices in writing enquired from these workmen about their non-attendance on 24-3-1989 and 26-3-1989. It is mentioned that they were holidays and weekly off days and when they were asked to perform duty as usual on those days, there was no mention of compensation in terms of OTA for duty performed. Besides it is stated that if there was mention of compensation in terms of OTA in the aforesaid orders they would have performed duty on those days that is 24-3-1989 and 26-3-1989. Thus there is no dispute on the point that they were aware of the fact that they were called upon to attend office on 24-3-1989 and 26-3-1989 and that intimation was given to them on 23-3-1989, may be late in the evening. When explanation was called for the workman Shri Katty, one of the aggrieved employees stated that when he was asked to come on holiday and Sunday he felt that was his privilege as a civil servant to enjoy postal holidays and Sunday and that right could not be taken away by the administration indiscriminately without mentioning as to on what basis he should work on holiday and Sunday. It is because of this, he refused to sign the order book and did not report for duty on 24-3-1989 and 26-3-1989. He further reiterates that if he has been ordered to work on OTA basis he would have definitely worked on both these days. This reply is addressed to Sr. Supdt. of Post Offices and it is in reply to the letter dated 3-4-1989. Thus the facts on the basis of which charge-sheet was given are not in dispute. The point argued was that the workers may have their commitments and it would not have been possible to avoid them because direction to attend work was given late. But that is not the case made out at any earlier stage and on the contrary contention of the workman is that their right to enjoy holidays and Sunday and weekly off was being taken away by the management without any assurance of compensation in the

form of OTA. In the statement of claim also it is mentioned that the service conditions of postal employees and those working in the Railway Mail Services Offices (RMS) are different and the postal employees are entitled to enjoy postal holidays and weekly off on Sunday. Exh-B in Annexure produced showing that the Postal Office Staff are granted weekly off on Sundays on which days the Post Office remains closed and no public transactions are carried out, while so far as R.M.S. Staff is concerned different considerations weigh and the circumstances and conditions under which they are entitled to weekly off and compensatory off are mentioned. It is therefore, evident that the management thought it fit to deal with them on the ground of misconduct and misbehaviour and ultimately after receipt of the replies, imposed penalty complained of.

12. Grievance made is that time given to them was short and when explanation was asked for it was refused which was violating principles of natural justice. It is true that the time as asked for as not given but the management thought that the ground on which it was asked for did not justify granting of time. However, it then appears some more time was given than the one given earlier and reply to that was given by the delinquent workmen. Some technical objections were raised on the ground that the order was not signed by the Competent Authority and that mistake was rectified. There is no other defect pointed out so far as the enquiry before imposition of penalty is concerned. The charges levelled were; mass absenteeism from work without permission, refusal to work overtime where such overtime work is necessary in the public interest, and resort to practices or conduct which is likely to result or results in the cessation or substantial retardation of work in any organisation. In my view the enquiry conducted for imposing minor penalty does not suffer from any defect and admitted facts go to show that the charges levelled could be held proved.

13. The contention that there was no mention that they would be paid overtime allowance for attending to duties and had it been so mentioned they would have allowed clearly goes to show that their absenteeism was mass absenteeism from work without permission and refusal to work overtime where such overtime work was necessary in the public interest. It has to be mentioned that it is for the management to see whether overtime work was necessary in the public interest and if it was thought so call upon workmen to attend and do it. Far from doing that the workmen declined to even sign and take note of the order and that was certainly not expected from an employee. If they are entitled to compensation for having worked on the days which were holidays and weekly off days they would certainly get that and if they do not could surely recover it through the medium of this Tribunal or Labour Court. But contention is that since it was not mentioned that they would be paid overtime allowance they declined to take note of it and also declined to come and attend to the duties. This cannot in my opinion be countenanced by the management.

14. It has been stated in the reply dated 18-5-1989 by Shri Katty that his past record will prove that he was a devoted Government Servant and never came for an adverse notice and there was no occasion on

which he had behaved in a manner which is unbecoming of a Government Servant. He further stated the application of conduct rules for a solitary instance is contrary to the instructions issued by the PMG on the subject in the past. This present act in which he was chargesheeted and punished is found by the management to be an act unbecoming of a Government Servant and showed lack of devotion to duty and I do not think that the management should be compelled to wait for the workmen to commit some more serious acts before invoking the relevant provisions. If some reasons for inability to attend were there surely it would not have amounted to any misconduct or misbehaviour but that is neither a case of the employees nor their contention. They stick up to the stand that they have a right to be away from the place of work and entitled to avail the benefit of weekly off on Sunday and postal holidays, no matter whether the management thought that persons were needed on account of some exigencies and the employees could sit in judgement over that decision of the management.

15. I may further mention that it was argued that warning would have been sufficient and adequate and the punishment is disproportionate. I do not think that the punishment inflicted is not commensurate with the gravity of the charge much less, it is so shockingly disproportionate that the Tribunal should interfere with the exercise of discretion vested in the management. It was urged that this is a case of victimisation. No material has been pointed out to show that there has been victimisation in respect of these employees.

16. It is in these circumstances that I find that the management's action cannot be said to be unjust, illegal or improper. The workmen are therefore, not entitled to any relief. Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 1994

का. आ. 1677.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार एम.सी.सी.एल. के ग्रांटरां के मंबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट विवाद में श्रौद्योगिक अधिकारण-I, हैवरानाड के पचपट को प्रकाशित करनी है, जो केंद्रीय सरकार को प्राप्त हुआ था।

[सं. ए. 22012/87/90-आई आर (मी-II)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1677.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C.L. and their workmen, which was received by the Central Government on the

[No. L-22012/87/90-IR(C. II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT .

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated, 6th day of June, 1994

Industrial Dispute No. 55 of 1990

BETWEEN

The Workmen of S.C. Co. Ltd.,
Ramakrishnapur, Adilabad.

...Petitioner

AND

The Management of M/s. S.C. Co. Ltd.,
Ramakrishnapur, Adilabad. ...Respondent.

APPEARANCES :

M/s. G. Bikshapathi, G. Vidyasagar, V. Vishwanatham,
N. Vinesh Raj, Advocates—for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha and M. Ananthasen
Rao, Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012(87)/90-IR(C.II), dated 26th August, 1990 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of M/s. Singareni Collieries Company Limited, Ramakrishnapur and their workmen to this Tribunal for adjudication :

"Whether the action of the management of M/s. S.C. Co. Ltd., Ramakrishnapur in changing the service conditions and denying to confirm S/Sri J. Laxmaia and 25 other workmen as general mazdoors is justified? If not, to what relief these workmen are entitled to?"

The reference was registered as Industrial Dispute No. 55 of 1990 and notices were issued to both the parties.

2. The petitioner workman filed their claims statement on 27th December, 1990. The Respondent Management filed their counter on 22nd June, 1991. Neither the Petitioner-workman nor the Respondent-Management adduced any evidence or filed any documents. As seen from the docket that very many adjournments were given to both the parties but they did not avail the opportunity and defended their case. When both the parties are not forthcoming and none of them were keen to prosecute the case, I feel that there is no reason for adjourning the case still further. Hence I find that the reference may be terminated since none of the parties appeared before this Tribunal. Reference is terminated.

Award passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 6th day of June, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

NIL

नई दिल्ली, 5 जुलाई, 1994

का. आ. 1678.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केंद्रीय सरकार एम.सी.सी.एल. के प्रबंधनात्र के मंबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट प्रौद्योगिक विवाद में श्रौद्योगिक अधिकारण-I, हैवरानाड के पचपट को प्रकाशित करनी है, जो केंद्रीय सरकार को प्राप्त हुआ था।

[सं. ए. 22012/87/90-आई आर (मी-II)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 5th July, 1994

S.O. 1678.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal No. 1, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C.L. and their workmen, which was received by the Central Government on the

[No. L-22012/66/90-IR (C. II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L.,
Industrial Tribunal-I

Dated : 1st day of June, 1994

Industrial Dispute No. 52 of 1990

BETWEEN

Syed Jani,
S/o Sri Syed Raza,
Station Road,
Mancherial-504208,
Adilabad District.

—Petitioner

AND

The General Manager,
Ramagundam Division,
M/s. Singareni Collieries Co.,
Project Post Godavarikhani,
Dist. Karimnagar.

—Respondent

APPEARANCES :

M/s. G. Bikshapathi, G. Vidyasagar and N. Vinesh Raj, Advocates for the Petitioner.
M/s. K. Srinivasa Murthy and G. Sudha, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012(66)/90-IR(C.II), dated 9-7-1990 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of M/s. Singareni Collieries Company Limited, Project, Ramagundam Division, Godavarikhani and their workmen to this Tribunal for adjudication :

“Whether the refusal of the management of M/s. Singareni Collieries Co. Ltd., Project Area, Ramagundam Division, PO Godavarikhani, Dist. Karimnagar (A.P.) in reemploying Sri Syed Jani, Ex-Boring Mazdoor, Prospecting Department as a Badli Filler is justified ? If not, to what relief and from what date, the workman is entitled ?”

This reference was registered as Industrial Dispute No. 52 of 1990 and notices were issued to both the parties.

2. The Petitioner workman filed their claim statement on 23-11-1990 and the Respondent Management filed their counter on 21-2-1991. For enquiry the matter was posted to 22-4-1991. From 22-4-1991

the matter went on adjourning from time to time. On 16-11-1993 on preliminary point M.W1 is examined in chief. Ex. M1 to M7 are marked. The advocate for the Petitioner is not present. The Petitioner called absent. There is no representation on their side. Hence no cross examination of M.W1 by the petitioner. The evidence of Respondent closed. For the petitioners evidence posted to 27-11-1993. From 27-11-1993 the matter went on adjourning from time to time till 2-2-1994. On 2-2-1994 I.A. No. 169/93 filed by the petitioner allowed. Hence posted for cross examination of M.W1 on 8-2-1994. On 8-2-1994 it is posted to this day for cross examination of M.W1 by the Petitioner. M.W1 did not attend the Court. Hence the evidence of MW1 in chief is eschewed. For further evidence of Respondent it is posted to 17-2-1994. On 17-2-1994 it is posted to this day for the further Respondent's evidence. Respondent not ready. It is an old matter of 1990. Hence the evidence of Respondent closed. For arguments it was posted to 25-2-1994. On 25-2-1994 both not ready. Posted to 26-2-1994. On 26-2-1994 Respondent filed written arguments. Heard both sides. For orders posted to 9-3-1994. On 9-3-1994 orders not ready. Posted to 17-3-1994. On 17-3-1994 Reopened and posted for further hearing to 31-3-1994. On 31-3-94 Respondent asked time posted to 12-4-1994. From 12-4-1994 it went on adjourn to 26-4-1994, 6-5-1994 and on 10-5-1994 heard the arguments of the Advocate for the Respondent. For hearing other side posted to 11-5-1994. On 11-5-1994. It is posted to this day for hearing the arguments of the Petitioner. When the matter is called the Advocate for the Petitioner and the Petitioner are not present. There is no representation on their side. The arguments of the Advocate for the Respondent are already heard. Hence no arguments for the petitioner. For award on 1-6-1994.

3. From the above facts and circumstances, it is clear that the Petitioner is not forth coming to prosecute their case inspite of several adjournments given and full opportunity was also given. Therefore I find that there is no reason of still adjourning the matter further and also the petitioner is not interested to claim the demand. Hence I am of the opinion that the reference be terminated. The reference is terminated.

Award is passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 1st day of June, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

NIL

नई दिल्ली, 6 जुलाई, 1994

का.आ. 1679.—जीवोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम/एस-पीपटलाल देतीश एण्ड कम्पनी के प्रबंधतात्व के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट जीवोगिक विवाद में केन्द्रीय सरकार जीवोगिक अधिकारण नं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-7-94 को प्राप्त हुआ था।

[संख्या एम-31012/36/92-आई आर (विविध)]
बी.एन. डैविड, डैस्क अधिकारी

New Delhi, the 6th July, 1994

S.O. 1679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Popatlal Hetshi and Co. and their workmen which was received by the Central Government on 6th July, 1994.

[No. L-31012|36|92-IR(Misc)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT:

Shri S. B. PANSE, Presiding Officer

Reference No. CGIT-2|84 of 1993

Employers in relation to the Management of
M/s. Popatlal Hetshi & Co.

AND

Their workmen

APPEARANCES :

For the Employers : No Appearance

For the Workmen

1. Shri S. R. Wagh,
Advocate

2. Shri S. R. Kulkarni,
General Secretary,
T&D Workers' Union.

INDUSTRY : Ports & Docks

STATE : Maharashtra

Bombay, dated the 16th June, 1994

AWARD

The Central Government, Ministry of Labour, by its letter No. L-31012|36|92-IR (Misc.) dated 5|12-10-1993 referred the dispute for adjudication under Section 10 (1) (d) of the Industrial Disputes Act.

2. The Reference was made in the following terms :

"Whether the action of the Management of M/s. Popatlal Hetshi & Co., Clearing and Forwarding Agents in terminating the service of Sh. Govindji Verji Shah, Dock Clerk w.e.f. 1-2-1991 is just, proper and legal ? If not, to what relief is the workman entitled ?"

3. After receipt of the order the parties to the dispute viz. M/s. Popatlal Hetshi & Co. and the Secretary, Transport and Dock Workers' Union, were duly served.

4. The Secretary of the Union was to file statement of claim in the matter as per the notice but on 21-4-1994 he filed a purshis (Exh. W|2) to the effect that Mr. G. V. Shah, the workman who raised the dispute demanding the reinstatement has not approached the Union. This being an individual dispute and the Union cannot pursue the same if the workman is not interested. It filed a purshis that the Reference may be disposed of.

5. In view of the abovesaid purshis there was no need for M/s. Popatlal Hetshi & Co. to file the written statement. I accept the purshis filed by Shri S. R. Kulkarni, the Secretary of the Transport and Dock Workers' Union, Bombay and pass the following order :

ORDER

The Reference stands disposed of.

The parties to bear their own costs.

S. B. PANSE, Presiding Officer

New Delhi, the 7th July, 1994

CORRIGENDUM

S.O. 180.—In the notification of the Government of India, in the Ministry of Labour, number S.O. 1751 dated the 5th June, 1992 published in the Gazette of India dated the 27th June, 1992 at page 2849,—

in the first sentence for the words "In pursuance of section 17 of the Industrial", read "In exercise of the powers conferred by sub-".

[F. No. U-23013|9|86-LW]
R. K. NARULA, Under Secy.